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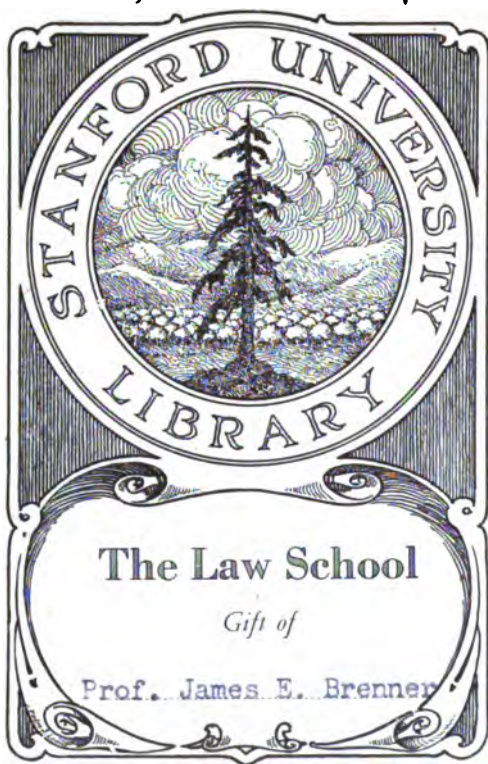
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J. E. Brenner



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1920

BUSINESS MEN'S LAWS OF CALIFORNIA

COMPILED FROM THE STATUTES
AND COURT DECISIONS

By

WALTER GOULD LINCOLN
OF THE
LOS ANGELES BAR

Compiler of
"California Laws," 1911
"Laws of Real Estate in California," 1913
"Uniform Negotiable Instrument Law (Annotated)," 1917

Price \$4.50 Net

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WALTER GOULD LINCOLN

FOREWORD

The laws of California are contained in the Constitution, the Codes, the Statutes and the decisions of the Supreme and Appellate Courts.

The Civil Code has 3543 sections, the Code of Civil Procedure has 2104, regulating the method of trying actions at law; the Political Code has 4605; the Penal Code has 1616; the General Laws comprise about 1500 pages, contained in one volume; the Statutes, in addition to these, are laws which are not numbered, but which, since 1850, probably have about 600 laws now in force, unrepealed. At present there are 180 volumes of Supreme Court decisions, and 40 volumes of Appellate Court decisions, probably 60,000 cases decided altogether. A grand total of about 13,000 laws, and 60,000 cases based upon them.

You can readily see that no one book can contain all the law, nor even all the law on any large subject. In this book I have endeavored to give the gist of the laws, in language which is not technical, and which can be understood by one who is not a lawyer.

Every statement in this book has an authority for it, to be found in some of these volumes of California Laws. If all these authorities were given, too much valuable space would be taken up—which might better be used for any other laws of interest. Yet, if any reader wishes to know the source of any sentence or law contained in this book, I will be glad to give it upon request, freely.

The book is not perfect. No book is. It is not complete. No law book can ever be. It may have errors. Every lawyer makes them, and even the Supreme Court has reversed itself—for man is fallible. But if the reader will find in its pages one bit of legal knowledge which he did not have before, and can save himself any troubles, or correct any difficulties by so doing—the book will be a success.

And, with that hope, the book goes forth.

WALTER GOULD LINCOLN.

American Bank Building
Los Angeles, California

Abstract of Title: See Real Estate.

Abandonment: See Insurance.

Acceptance: See Negotiable Instruments, ¶3213, 3214, 3220, 3221, 3222, 3223, 3243, 3244.

Acceptor: See Negotiable Instruments, ¶3143, 3144.

Accession: See also Real Estate; Personal Property; Liens.

When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; he must, however, reimburse the value of the remainder to the other owner, or surrender the whole to him.

The principal part is that to which the other has been united for the use, ornament, or completion of the former, unless the latter is the more valuable and has been united without the consent of the owner. In such case, the owner may require it to be separated and returned to him, although sole injury should result to the thing to which it had been united.

If neither can be considered the principal part, then the more valuable is to be deemed the principal part; or, if the values are nearly equal, that thing which is the more considerable in bulk.

If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship—unless the value of the workmanship exceeds the value of the material—in which case the thing itself belongs to the worker, on paying the value of the material.

Where a person has made use of materials which belong partly to him and partly to another, and has formed a thing of a new description without having destroyed any of the material, but in such a way that these materials cannot be separated without inconvenience—the thing so formed belongs to both persons; but in proportion—as the value of the material is to one, and as the value of material and his workmanship is to the other.

When a thing has been formed by the mixture of several materials of different owners, and none of these can be considered the principal substance, an owner without whose consent the mixture was made, may require that the materials be separated—if it can be done without inconvenience. If this cannot be so done, then all the owners own the thing in common—each in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the other, both in quantity and value, this owner may claim the entire thing upon paying to the others the value of their materials. This paragraph applies only to cases where one has used materials with the consent of the owner. If the owner had not consented, then the product belongs to him, if he can be found.

In all cases where one whose material has been used without his knowledge (in order to form a product of a different description) can claim an interest in such product—he has an option to demand either restitution of his material in kind (the same quality, quantity, weight, measure) or the value of it; and has the same option to demand the value of the product, or the product itself—in cases where he is entitled to the product. (See Conversion.)

One who wrongfully employs materials belonging to another, as above, is liable in damages as well as under the conditions described.

Accessory Before the Fact: There is no such distinction in our law; all such persons are principals in crime.

Accessory After the Fact: Is one, who, after knowledge of the commission of felony, conceals it from the magistrate, or protects the person charged with the crime. But “mere silence is not enough; there must be some affirmative act.”

Accident: See Act of God; Bill of Lading, 2130b; Carriers.

The following have been considered by our Supreme Court to be accidents—such as to allow compensation under the “Employers’ Liability Law” (which see):

Pulling out a timber; bite of a cat kept by employer; being struck by lightning when on a high scaffold; being hit by a stone thrown by a boy onto an engine, hitting a cashier traveling with his employers’ money.

These, however, are not such as to be considered accidents: Being struck by a piece of iron thrown by a boy in anger; fright at insect; felonious assault of employer; sting from a wasp; frost bite;

being shot when gambling during work hours; falling from quay on shore leave; being struck in the eye by a trick camera; falling down stairs when tickled in fun by fellow employee; gradual loss of eyesight when using wood alcohol in spray.

Accommodation (Maker, Party or Endorser): See Negotiable Instruments, ¶3110, 3145.

Accord and Satisfaction: If a debt or claim be disputed at the time of payment, and the creditor takes a less amount than claimed, even if the dispute were unjust—this is an accord which he cannot afterward cancel, nor he be awarded any more than the amount of the settlement. If the debtor sends the creditor a check for a smaller amount than claimed and writes upon it, or sends a letter at the same time, to the effect that this check is in full settlement of the claim, the creditor will not be permitted to cash the check and apply the amount on account—but if he cashes the check, he will be bound to accept this amount as the full settlement of the bill—even though he did not mean to or did not want to.

Account: See Limitations; Accord and Satisfaction; Sales; Bulk Law; Actions; Attachment; Interest.

Account Stated: When an account is rendered to a debtor it becomes his duty to make seasonable objections to it, if he has any, and if he does not do so, the account becomes an account stated and the foundation of an independent cause of action, which arises whenever a reasonable time has elapsed without any objection being made to it. Twenty-five days may be enough.

An ACCOUNT STATED is a document—a writing—which exhibits the state of account between parties and the balance owing from one to the other, and when assented to, either expressly or impliedly, becomes a new contract. An action on it is based upon this agreed amount; it can be avoided only by averments and proof of fraud, mistake, etc. The original dealings cannot be inquired into; there need not be mutual or cross accounts or demands between the parties. The acknowledgment of a debt, even though it consists of but one item, may form the basis for an account stated.

A BOOK ACCOUNT is a detailed statement, kept in a book, in the nature of debit and credit, arising out of contract or some fiduciary relation. The book must show (as a necessary element) against whom and in whose favor the charges are made.

An **OPEN BOOK ACCOUNT** is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise, consisting of a series of transactions; also one in which some item in the contract is left open and undetermined by the parties, in which case it does not matter how many items there are; also an account, the seller of which anticipates further business dealings with the buyer. It is an unsettled debt arising from items of work and labor, goods sold and delivered and other open transactions, not reduced to writing, and subject to future settlement and adjustment. It is usually disclosed by the books of the seller.

The distinction between an account stated, and an open account is this; in the former, there must have been some agreement as to the amount—either express or implied; in the latter, it is usually an account not agreed upon by the parties.

ACCOUNT BOOKS, when admitted as evidence, must be books of account kept in the regular course of business; it must be shown that the business is of such a character that it is proper or necessary to keep such books; that the entries were either original entries or the first permanent entries of the transaction; that they were made at the time, or within reasonable proximity to the time of the respective transactions; that the person making them had personal knowledge of the transaction or obtained such knowledge from a report regularly made to him by some person employed in the business whose duty it was to make the same in the regular course of business.

A **CURRENT ACCOUNT** is one consisting of items of different dates.

MUTUAL, OPEN and CURRENT ACCOUNTS are those where parties have dealt together, selling and buying from each other. Their demands must be reciprocal; that is, they must be of such a nature that each party has an immediate right of action against the other. Where one sells to another from time to time—this does not constitute such an account; nor do items all on one side of the ledger.

Accountant: No person shall be allowed to hold himself out or advertise as a public accountant unless he shall have an unrevoked license so to do from the State Board of Accountancy.

Accretions: See Real Estate; (Compare Accession).

Acknowledgments: See Real Estate.

Acknowledgment—To acknowledge an instrument is to appear and admit or avow, under oath, before a proper officer or court, that the person so appearing and taking the oath is the person who executed the instrument, and that he authorized it to be done and subscribed for him, for the purpose of having a certificate attached which will qualify the instrument to be admitted in evidence, or to be recorded, or both, without further proof of genuineness.

Before a deed, or contract of sale of real property, or other instrument, can be recorded, it must be acknowledged or proved before a person authorized by law to take such acknowledgment or proof. The instrument can then be presented to the county recorder to be spread upon the public records at any time thereafter whenever it may be desired to do so.

The proof or acknowledgment of an instrument may be made at any place within this state before a justice of the supreme court, or a clerk of the same, or a judge of a superior court. Within the city, county, city and county, or township, for which the officer was appointed or elected, before either a notary public, a justice of the peace, a county recorder, a court commissioner, a clerk of a court of record. Or, when any of the officers mentioned are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

Every legislature has been in the habit of passing what is known as validating acts, which validate any defects in the acknowledgments of an instrument which has been at that time copied into any proper book of record in the office of any county recorder.

Act: Is a statute or law made by a legislative body—such as a city council, or assembly of the state. (Compare Law.)

Act of God (Compare Accident) is something in opposition to the act of man; for everything is the act of God that happens by His permission—but refers more particularly to such acts as could not happen by the intervention of man—as storms, lightnings, tempests. The expression excludes the idea of human agency; and if it appears that a given loss has happened in any way through the intervention of man, it cannot be held to have been the act of God.

A fire which destroys a building is not an Act of God, unless caused by lightning or some other superhuman agency.

Actions: See Adverse Possession; Arrest; Compromise; Conversion; Courts; Attachment; Appeals; Deficiency; Deposition; Demand; Damages; Judgment; Jury; Liens; Limitations; Real Estate; Unlawful Detainer; Subpoena; Claim and Delivery.

A civil action in any court is commenced by filing a paper called a complaint. This is a narration of the circumstances about which the plaintiff complains to the court of the offense which he considers the defendant has done to him, and in which he asks that the defendant pay that which he owed, or the damages for this offense.

The COMPLAINT should be written in as simple language as possible, and state only the facts upon which the plaintiff relies for his cause of action—with no legal conclusions, such as (as required by law; wrongfully, unlawful; there is now due and owing; groundless, false, wilfully; fraudulently, maliciously; will suffer irreparable injury.)

Matters of evidence must not be stated, either.

Complaints filed in the Superior Court must be sworn to. The only complaint in the Justice Court which needs to be sworn to is that in unlawful detainer.

At any time within a year after filing a complaint (but no longer) a summons may be issued by the court. This summons directs the defendant to appear before the court within a certain time, and states that if he does not do so, the plaintiff will be awarded the judgment which he asks for in the complaint.

A copy of this summons, to which is attached a copy of the complaint, must be served on the defendant personally within three years (if the action is commenced in the Superior Court) or within any time at all in the Justice Court.

If summons is served within the township where it was filed (if filed in the Justice Court) the defendant must make such appearance within five days after he receives such copies; if served in the same county, then he must appear in ten days; if served outside the county, he must appear in twenty days.

In the Superior Court the defendant must appear in ten days, if served within the county in which the action is commenced; and within thirty days, if served outside the county. (See Publication of Summons, this article.)

PUBLICATION OF SUMMONS: Where a person on whom service is to be made resides out of the state; or has departed

from the state; or cannot, after due diligence, be found within the state; or conceals himself to avoid the service of summons; or is a corporation having no officer or other person upon whom summons may be served, who, after due diligence, can be found within the state, and the fact appears by affidavit to the satisfaction of the court, or a judge of it; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file, that it is an action which relates to or the subject of which is real or personal property in this state, in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, in it, or in which the relief demanded consists wholly or in part in excluding such person or corporation from any interest in it, such court or judge may make an order that the service be made upon a person by publication of the summons. Such publication must be in some newspaper of general circulation, published in the county where the action is filed—and must be for at least 60 days. (See Judgment by Default; Attachment.)

When the defendant receives a summons, he should at once consult an attorney, so as to know the wisest manner in which to proceed. Of course, he is privileged to make his own appearance, either in person, or by filing some paper (which will be considered later), but it will save money to hire a lawyer to tell him what to do.

The APPEARANCE need not be in person, but may be, and usually is, by an attorney. Before the required time, he files in the same court a paper in response to the complaint. This paper may be either a demurrer, or an answer, or both.

A DEMURRER is a criticism of the language in which a complaint is written, and usually raises the point that there are not sufficient facts stated in the complaint. This demurrer is presented and argued by the attorneys on both sides, before the judge which sits in the court where the complaint is filed, and who then decides whether or not the facts are properly stated. If the demurrer is sustained (that is, the defendant's attorney is right in his criticism), the complaint must then be rewritten to conform to these suggestions. The time for rewriting and filing such amended com-

plaint is usually ten days, but additional time may be granted by the judge.

At the end of such time, the amended complaint is filed, to which another demurrer may be filed, if desired. When the legal points raised by these various demurrers have been finally settled the defendant must file his answer (which must be under oath in the Superior Court, provided the complaint was sworn to) and in which he makes such denials or admissions as he wishes, or he may at the time file a counter claim or cross complaint.

CROSS COMPLAINT: Whenever the defendant seeks affirmative relief against any party to the action, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time or, by permission of the court, subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. If any of the parties affected by the cross-complaint have not appeared in the action, a summons upon the cross-complaint must be issued and served upon them in the same manner as upon the commencement of an original action.

There can be no cross-complaint in a Justices' Court.

COUNTER CLAIM: Must be one existing in favor of the defendant and against the plaintiff between whom a separate judgment might be given in the action, and arising out of one of the following causes of action: (1) Out of the transaction set out in the plaintiff's complaint, or connected with the subject matter of the action; or, (2) In an action based upon a contract; any other cause of action also based upon contract, and existing at the beginning of the action. But if the defendant does not set up this counter-claim based upon a cause arising out of the transaction set out in the complaint, neither he nor his assignees can afterward maintain an action against the plaintiff for it.

When the defendant has filed any of these papers, the plaintiff, in his turn, has the right to demur to them (or, if a cross-complaint is filed, it is necessary that the plaintiff answer it).

BILL OF PARTICULARS: After the action has been commenced, the defendant can demand an itemized bill (or bill of particulars) showing the items of the account sued upon, with

dates and times of sale and payment, if any, and if such bill is not furnished within five days from the date of demanding it, the plaintiff cannot introduce any proof upon the items at the time of the trial.

TRIAL: When all of these answers, cross-complaints, etc., have been finally filed, the case is ready to be set for trial. The time when the trial may take place will depend entirely upon how busy that particular court may be. Each side is entitled to five days' notice of the trial.

At the time of setting the case for trial, if either side wishes to have the case tried by jury, they must ask for it, and the jury fee of thirty dollars a day must be paid in advance. Otherwise neither side can afterward ask for a jury trial, having been considered to have waived it.

At least a week before the day of trial, all the intended witnesses should be subpoenaed (see Subpoenae), and should be interviewed by the attorney who is to try the case.

At the trial, the plaintiff's evidence is introduced first, with his witnesses sworn and examined. The defendant's attorney then has the right to cross examine each of plaintiff's witnesses, and plaintiff's attorney may cross examine those of defendant.

NON-SUIT: If the plaintiff does not present enough facts to prove his case, the defendant will ask for a non-suit. If this is granted by the judge, it acts as a dismissal of the case. When the case is being tried before a jury, such a motion is called a Directed Verdict.

There can be no non-suit in the Justices' Court.

When the evidence is all in, the judge renders his decision, which is called a Judgment (which see); if the trial is by jury, its decision is called a Verdict. (See Appeal.)

Advancements: See Succession.

Adverse Possession: See Real Estate.

Affidavit: See Oath. A written declaration under oath.

Affirmation: See Oath.

Agent: See Real Estate Agent; Factor; Principal and Agent; Master and Servant; Employer and Employee; Negotiable Instruments, ¶3100, 3101, 3102, 3103, 3117, 3150, 3172.

Agency: See Factor; Master and Servant; Employer and Employee; Wages; Real Estate Agents; Auctioneer.

1. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

2. Any person having capacity to contract may appoint an agent, and any person may be an agent.

An agent for a particular act or transaction is called a special agent. All others are general agents.

3. An agency is either actual or ostensible.

It is actual when the agent is really employed by the principal, and is ostensible when the principal intentionally, or, by want of ordinary care, causes a third person to believe another, who is not really employed by him, to be his agent.

4. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

Every act which (according to the laws of California) may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. (See Statute of Frauds; Real Estate Agents.)

An agent has such authority as the principal, actually or ostensibly, confers upon him.

Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Every agent has actually such authority as is defined by this article (unless specially deprived thereof by his principal), and has

even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

An agent has authority:

(a) To do everything necessary or proper and usual, in the ordinary course of business, for affecting the purpose of his agency; and,

(b) To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

An authority expressed in general terms, however broad, does not authorize an agent:

(a) To act in his own name, unless it is usual course of business to do so;

(b) To define the scope of his agency; or,

(c) To do any act which a trustee is forbidden to do. (See Trusts.)

An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

An authority to sell and convey real property includes authority to give the usual covenants of warranty. (See Real Estate Agents.)

A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterward.

An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would belong to the agent from transactions within such limit (if they had been entered into on his own account) belong to the principal.

A principal is bound by an incomplete execution of an authority, when it is not consistent with the whole purpose and scope of it, but not otherwise.

5. A ratification can be made only in the manner that would have been necessary to confer an original authority for the ratifier; or, where an oral ratification would suffice, by accepting or retaining the benefit of the act with notice of it.

Ratification of part of an indivisible transaction is a ratification of the whole.

It is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. (See Rescission.)

6. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

When an agent exceeds his authority, his principal is bound by his authorized act so far only as they can be plainly separated from those which are authorized.

A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have, in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith of the authority.

An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same, and is responsible for it if, after notice from the owner, he delivers it to his principal.

7. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the cause of his agency, in any of the following cases, and in no others:

(a) When with his consent, credit is given to him personally in a transaction;

(b) When he enters into a written contract in the name of his principal, without believing, in good faith, that he had authority to do so; or,

(c) When his acts are wrongful in their nature.

One who assumes to act as an agent thereby warrants to all who deal with him in that capacity that he has the authority which he assumes.

One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

8. Unless required by or under the authority of law to employ the particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfill the obligations of the principal.

A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

9. An agency is terminated, as to every person having notice of it, by (a) The expiration of its term; (b) The extinction of its subject; (c) The death of the agent; (d) His renunciation of the agency; or, (e) The incapacity of the agent to act as such.

Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by (a) Its revocation by the principal; (b) His death; or, (c) His incapacity to contract.

10. Unless specially forbidden by his principal to do so, an agent can delegate his powers to another person in any of the

following cases and in no others: (a) When the act to be done is purely mechanical; (b) When it is such as the agent cannot himself lawfully perform, and the sub-agent can; (c) When it is the usage of the place to delegate such powers; or, (d) When such delegation is specially authorized by the principal.

If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

A sub-agent, lawfully appointed, represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the sub-agent.

Agreement for Sale: See Real Estate.

Air, Law of: See Aviation.

Aliens: See Real Estate; Citizens.

Alteration of Instruments: See Negotiable Instruments, ¶3204, 3206; Contracts; Bill of Lading, 2128; Warehouse Receipts, 13.

Any change in the terms of a written contract which varies its legal effect and operation (either as to the obligation or as evidence), when made by any party to the contract, is an alteration of it, unless all the other parties to the contract gave their express or implied consent to the change. And the effect of such alteration is to change the altered instrument as a legal obligation even in the hands of a bona fide holder, and whether made with fraudulent intent or not. The alteration may consist in changing (1) its date, or (2) the time, or (3) place of payment, or (4) the amount of the principal, or (5) the interest to be paid; or (6) by adding some new provision; or (7) by substituting one provision for another; or (8) by obliterating, or (9) subtracting some provision in it.

Alluvion: See Real Estate.

Ancient Lights: See Real Estate.

Animals: See Deposit; Storage; Liens; Estrays; Findings; Dogs; Live Stock; Monopolies; Fence.

The California laws are quite unlimited in their endeavor to protect all kinds of animals (except, of course, the "game laws," which are changed every Legislature, and which are too extensive and complicated for a work of this kind.)

The following offenses against animals are crimes: Administering any poison, drug, medicine, or other noxious substance—except

for medicinal purposes; to place any sponge, wood or foreign substance, upon any animal with intent to affect his speed, or endurance, or physical condition; to fail to keep any animal securely enclosed, and free from contact with other animals, when such animal is affected with any contagious or infectious disease; to fail to cremate or bury the body of any animal which has died of any infectious disease, or to permit such body to be used for food for human beings, or food for domestic animals or fowl; to overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, to cruelly beat, mutilate or kill any animal, or to subject it to needless suffering, or in any manner abuse it or fail to provide it proper food, drink or shelter, or protection from the weather, or to drive, ride or otherwise use the animal when unfit for labor; to cause animals to fight, worry or injure each other for amusement or gain of human beings; to dock any horse; to omit to kill any animal which is unfit by reason of its physical condition for the purpose for which such animals are usually employed; to use a bristle burr, burr tack, or other similar device.

One who keeps a dog which he knows to be vicious, is responsible for any injuries which it commits—such as killing another dog.

And one who keeps a wild animal (such as a circus owner) is responsible for damages caused by such animal. The owner must exercise the highest degree of care, and is an insurer against the acts of the animal.

It is unlawful for any person, firm or corporation owning, or having possession of, any animal, to suffer or permit such animal to break into and enter upon any land owned by, or lawfully in the possession of any person, firm or corporation, other than the owner of such animal, in all cases where such land is planted to growing crops, vines, fruit trees or vegetables, and is at the time entirely enclosed by a substantial fence or other inclosure.

The owner of, or person who is in the lawful possession of, any land trespassed upon, in violation of this act, is entitled to recover, by action in a court of competent jurisdiction, from the owner of, or person in possession of, or person chargeable with the care of, the trespassing animal or animals, all actual damages sustained by reason of such trespass, together with costs of suit.

For the purpose of allowing the plaintiff a better security for the payment of any judgment he may recover in actions brought under

the first two sections, all the provisions of the Code of Civil Procedure of this state relating to attachment process shall apply to such actions, subject only to the following modifications, to-wit: Instead of filing the affidavit on attachment, the plaintiff is entitled to the issuance of a writ of attachment against the property of defendant, upon filing his complaint stating a cause of action under this act, verified according to the law concerning the verification of pleadings.

No animal is exempt from attachment or execution, levy and sale, to satisfy a judgment that may be rendered against the owner of such animal for trespass committed by such animal.

TRESPASS: If the owner of animals in the counties subject to the Fence laws does not confine them upon his own lands, he is guilty of no wrong, unless it should appear that through malice to injure his neighbor—or the overstocking of his pasture lands for the purpose of feeding his herds upon the pasture of his neighbor—he should unconsciously drive or herd them upon his neighbor's lands. In such case, the courts would restrain him from so doing.

TRESPASS OF: The rule of the common law (see Common Law) which required every man to keep his beasts within his own close, was in force in this State until 1850, when it was set aside by the legislature of that year. In 1863, and following years, special acts were passed applying to various counties, so that now in many counties the law is that an owner of land is not required to fence it against cattle belonging to another person, but could maintain an action for damages against the owner of such cattle, permitting them to trespass upon such unenclosed land. This is the rule in the following counties: Santa Clara, Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, Monterey, Los Angeles. It has not been changed by the 1907 act, which made it unlawful for any person owning or in possession of an animal to suffer or permit such animal to break into or enter upon any lands of another person where such land is planted to growing crops, vines, fruit trees or vegetables, where such land is at the time enclosed by a substantial enclosure.

But, under a former statute, it made no difference whether there was a fence or not, and it has been so decided.

Anti-Trust Law: See Monopolies.

Apartment House: See Hotels; Liens.

Apprentice: See Children.

Apprentice Laws: See Children.

Appropriation: See Water Law.

Appurtenances: See Real Estate.

Answer: See Action.

Appeal: See Attachment; Action.

If either side is dissatisfied with the Judgment of the Court, or the Verdict of the Jury, he may appeal. (The proceedings for perfecting an appeal from the Superior Court are too complicated for a work of this kind, and impracticable for any one not an attorney to attempt.) If the action was tried in the Justices' Court, a notice of appeal is filed, and a bond for costs deposited with the Clerk of the Court. (If it is wished to have a stay of execution, an additional bond in twice the amount of the judgment must also be filed.) These bonds can be cash, or be signed by a surety company, or two householders, or two freeholders, each of whom swears that he is worth the amount of the bond.

The appealing party must also pay the fees of the Superior Court, namely \$8, and cost of Justices' transcript, \$1.50.

If the judgment was by default, there is no appeal in the Justices' Court. The only remedy is to make a motion to set it aside. This motion must be presented before the Justice and heard within ten days from the time the party has notice or knowledge of the judgment.

When the case is again tried in the Superior Court, there is no appeal from this decision. (See Courts.)

Architects: No person in this state is permitted to advertise, or to put out any sign, card or other device which might indicate to the public that he is an architect, unless he has received a certificate to practice architecture in this state, from the State Board of Architecture; but this shall not prevent any person from making plans for his own building, nor furnishing plans or other data for buildings for other persons—provided he does not claim to be a certified architect. (See Liens.)

Arrests: A private person may arrest another for a public offense committed or attempted in his presence; or, when the person arrested has committed a felony, though not in his presence; or, when a felony has in fact been committed, and he has reasonable cause to believe that the person arrested committed it.

If the offense be a felony, he may break open the door or window of the house in which the person to be arrested is, or in which there is reasonable grounds for believing him to be—after having demanded admittance and explaining the purpose for which admittance is desired.

Any person making an arrest may summon orally as many persons as he deems necessary to aid him in so doing.

A private person making an arrest must take the arrested person before a magistrate without unnecessary delay, or deliver him to a peace officer.

He may take from the arrested person all offensive weapons which are about his person, and must deliver these to the magistrate before whom he is taken.

When a peace officer makes an arrest, either with or without a warrant, it may be for any of the circumstances under which a private person may make an arrest, and also on a charge made upon a reasonable cause of the commission of a felony by the party arrested; or at night, when there is reasonable cause to believe that he has committed a felony.

If the offense charged is a felony, the arrest may be made at any time, day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon direction of the magistrate, endorsed upon the warrant—or unless the offense is committed in the presence of the arresting person.

The person making the arrest must inform the arrested person of the intention to arrest him, of the cause of the arrest, and the authority in committing or attempting to commit, an offense, after information of the intention to make the arrest.

When the arrest is being made by an officer under authority of a warrant, he may use all necessary force to effect the arrest, if the person arrested either flees or forcibly resists—or is pursued immediately after its commission, or after an escape.

A peace officer may break doors and windows in the same manner and under the same circumstances as a private person.

If he is acting under authority of a warrant, he must show it, if required.

Every person who wilfully obstructs, resists, delays any public officer in the discharge or attempt to discharge any duty of his

office, is punishable by fine not exceeding \$5000, and imprisonment in the county jail not exceeding five years.

Every male person, over the age of 18 years, must assist in taking or arresting any person against whom there may be issued any process, or in aiding and assisting in retaking any person who may have escaped from confinement or arrest; and if he does not do so, he is subject to fine and imprisonment, or both.

Every person who attempts to rescue, or aids another in rescuing, any prisoner from any prison or from any officer or person having him in lawful custody; or who takes or attempts to take, or assist in the taking of any personal property from the custody of any officer or person having charge of the same under any process of law; or who wilfully assists any paroled prisoner, or prisoner confined in any prison or jail—is punishable.

Force may be used by the owner to retake property from the person who has obtained possession of it by force or fraud, and is overtaken while carrying it away. But only as much force as is necessary to retain it. If more is used, it may become battery.

Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent or other relative, or member of one's family, or of a ward, servant, master or guest.

Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the day of election, during their attendance at such election, going to and returning therefrom.

Arrest in Civil Actions: See Bankruptcy. The California Constitution provides that there shall be no imprisonment for debt, except in cases where debts were fraudulently contracted or where there is an attempt at fraudulent disposition of property with intent to delay creditor or deprive him of payment. In such cases the body of the debtor is allowed to be seized and confined.

No person can be arrested in civil action except in an action for the recovery of money or damages arising upon contract, or after judgment, when the defendant is about to depart from the state with intent to defraud his creditors; in an action for fine or penalty, or for money or property, fraudulently misapplied, or converted to his own use, by a public officer, or an officer, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect

in office, or in a professional employment, or for a wilful violation of duty; in an action to recover possession of personal property unjustly detained, when the property or any part of it has been concealed, removed or disposed of, to prevent its being found or taken by the sheriff or other officer; when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for taking, detention, or conversion of which the action is brought; when the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

An order for the arrest of the defendant must be obtained from a judge of the court in which the action was brought.

The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists.

Before making the order of arrest, the judge must require a bond from the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

Debtor may be discharged by giving bail, or at the request of creditors or upon application to Judge of the Superior Court, and proper oath. After discharge in the manner as in the last two cases, he cannot be arrested again for the same debt. If not discharged, the creditor must pay the debtor's board in the jail, each week in advance, or debtor will be discharged.

No woman may be arrested in civil action, under any circumstances. (See Execution.)

Arson: See Insurance.

Arson is wilful and malicious burning of a building, with intent to destroy it.

Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of this article.

Any building which has usually been occupied by any person lodging therein at night is an "inhabited building" within the meaning of this article.

The phrase "night time," as used here, means the period between sunset and sunrise.

To constitute a burning, within the meaning of this article, it is not necessary that the building set on fire shall have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying, such building, or any part of it.

Arson is divided into two degrees.

Maliciously burning in the night time, an inhabited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree.

Arson is punishable by imprisonment in the state prison, as follows:

1. Arson in the first degree, for not less than two years.
2. Arson in the second degree, for not less than one nor more than twenty-five years.

Every person who wilfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Artesian Wells: Is any artificial well, the waters of which will flow continuously over the natural surface of the ground adjacent to it, at any season of the year. (See also Water Law.)

Any artesian well which is not capped, equipped or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of any water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain

or continue, is guilty of a misdemeanor; and any person owning, possessing or occupying any land upon which is situated an artesian well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

For the purposes of this act, an artesian well is defined to be any artificial hole made in the ground through which water naturally flows from subterranean sources to the surface of the ground for any length of time.

Waste is defined, for the purposes of this act, to be the causing, suffering, or permitting any water flowing from an artesian well, to run into any river, creek, or other natural water-course or channel, or into any bay or pond (unless used thereafter for the beneficial purposes of irrigation of land or domestic use), or into any street, road or highway, or upon the land of any person, or upon the public lands of the United States or of the State of California, unless it be used thereon for the beneficial purposes of the irrigation thereof, or for domestic use, or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land, whenever over ten per cent of the water received on such land for irrigation is allowed to escape therefrom, is also hereby declared to be waste within the meaning of this act. Each day's continuance of such waste shall constitute a new offense.

Assault and Battery: This is really not one act, but two, the assault being the attempt to commit a battery, and battery being an unpermitted application of force by one person to another's person. The amount of the force applied is not the question, but was it without permission. The term "person" includes not only his body and clothing, but also what he may be sitting or riding upon, or what he may be carrying. In such cases, damages are presumed. The greater the assault, the greater the damage, undoubtedly. But one should resist only so far as necessary to protect himself from injury. If the resistance is too great, it becomes battery on his part. Hypnotism, drugged candy, a loaded cigar, a concealed fire-cracker, or some concealment by which a person injures himself—each is a battery—but scuffling in play, boxing or hazing would not be.

The right to use force, particularly as against the person of

another, must be no more than is reasonably adequate and necessary to the occasion. (See Arrest.)

Assessment: See Corporations.

Assignment of Contracts of Sale of Real Estate: See Real Estate; Fraud.

Assignment: See Landlord and Tenant; Transfers; Bankruptcy; Bulk Law. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner; except wrongs done to the person, the reputation, or the feelings of the injured party, and except contracts of a purely personal nature—such as promises of marriage.

Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods, choses in action, or of any rent or profits issuing from them, and every charge upon land, goods, or things in action, or upon the rents or profits of it, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands—and every bond or other evidence of debt given, suits commenced, decree of judgment suffered, with like intent, shall be void against the persons hindered, delayed or defrauded.

Assignee: See Assignments; Negotiable Instruments. The one to whom an assignment is made.

Assignor: See Assignment; Negotiable Instruments. The one who makes the assignment.

Assumed Name: See Name; Fictitious Name; Trade Name (under Trade Marks).

Assumed Risk: Though this defense is no longer good in this state, since the Workmen's Compensation Law was in force, yet there are many who desire to know its meaning.

An employee is not required to use any degree of care or diligence to discover defects; he will be held to have assumed the risk only where he knew, and will be held to have known only when the defect was so obvious that he must have known or simply refused to open his eyes and see; or when he was put upon inquiry by some discovery or suggestion of danger which was gross negligence for him to neglect.

Attorney at Law: See Lawyers; Costs; Bill of Lading.

Attachment: See Action; Animals; Limitations; Exemption; Liens; Wages; Mortgages; Chattel Mortgages; Appeal; Bill of Lading, 2128h, 2129e; Warehouse Receipts, 25, 42.

In an action brought upon an express or implied contract and at any time before trial, the plaintiff may cause any real or personal property belonging to the defendant (or in which he claims an interest not exempt), to be attached, or taken into possession of the Sheriff or Constable.

If judgment prayed for in the Justices' Court is less than ten dollars, no attachment may be issued.

Attachments may be issued for suits brought on bail bonds; for official bonds; for appeal bond; for commissions due; for assessments due a corporation; for labor on a boat; for any contract, if the amount is certain; on mortgage foreclosure, in the possibility that the property will not bring the amount of the mortgage, and that there may be a Deficiency Judgment (which see).

But attachments cannot be levied for installments due; nor for Torts; nor for money won in gambling; for collision of vessels; for debts not due; nor when the creditor has collateral security, or other security, which he has not used to satisfy the debt.

GARNISHMENT: When a writ of attachment is served upon a person having in his possession or under his control, any credits or other personal property belonging to the defendant, or owing any debts to the debtor at the time of service upon such person of a copy of such writ—such service is called garnishment, and the person is said to be “garnisheed.” He must hold all such property, give a statement of it to the officer who serves the writ, and keep it safely until the outcome of the suit.

GARNISHMENT OF MONEY IN THE HANDS OF LAW: Money in the hands of a constable, sheriff, clerk of the court or receiver, cannot be garnisheed, attached, or levied upon.

GARNISHMENT OF MUNICIPAL OFFICERS' SALARIES: Salaries of State or County or City employees cannot be garnisheed before judgment rendered, and then only under special proceeding.

GARNISHMENT OF WAGES: The wages, or earnings, of a debtor may be garnisheed at any time after filing a suit, but will be released when the officer discovers that such wages are necessary for the support of the debtor's family, or those dependant upon him, in whole or in part, and have been earned within 30 days next preceding the levy of the writ; if the bill was for necessities, only one-half of such wages will be released.

THIRD PARTY CLAIM: If the property levied upon is claimed by a third person as his property by a written claim, verified by his oath, or that of his agent, setting out his right to the possession of it, and served upon the sheriff—the sheriff is not bound to keep the property unless the creditor, on demand, indemnifies the sheriff against such claim by an undertaking of at least two sureties in a sum equal to double the value of the property; and the sheriff is not liable for damages for the taking or keeping of such property unless such claim be filed.

FEDERAL EMPLOYEES' SALARIES: As Justices of the Peace and the Judges of the Superior Courts have no jurisdiction over the Federal Government, a writ issued by either of these officials cannot be enforced in the United States Courts, and consequently Federal Employees' salaries cannot be reached in this manner.

SALE OF ATTACHED PROPERTY: If the property is perishable (such as fruit, eggs, or the like), the attaching officer will sell it at once; if the property would depreciate in value during the time the case is pending, an order for its sale at once may be obtained from the judge; in other cases, the property will be sold after a judgment is rendered in favor of the creditor, and the amount received will be applied to pay the judgment.

Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking an order may be made, releasing from the operation of the attachment any or all of the property attached; and all of the property so released, and all of the proceeds of the sales thereof, must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff. Such justification must take place within five days after notice of the filing of such undertaking.

MEASURE OF DAMAGES FOR ATTACHMENT IMPROPERLY SUED OUT: If, at the time of the trial, a judgment is rendered in favor of the defendant, he is entitled to his costs, but he cannot recover anything more than this amount from the plaintiff personally, unless he can show that the attachment was issued wrongfully, without probable cause, and with malice. In other words, that the plaintiff brought the action and had the attachment levied,

entirely from spite, and because the defendant owed him nothing at all. The defendant in such case is entitled to exemplary damages, that is, to damages which are intended to be punishment to the plaintiff for bringing such action.

If the defendant wins the case, he may recover damages from the sureties, to such amount as he may have sustained. This is a very uncertain and unsatisfactory amount, and the Supreme Court has not made any positive rule; but the following, among others, are measures of recovery—legal interest upon money deposited in bank, for the time it was withheld from possession of defendant; goods, or corporation stock, which may have depreciated in value, then the amount of such depreciation, especially if he could have sold it in the meantime; if his business be closed up and a keeper placed in the store, he could not recover for loss of business, for expected profits, or for injury to his financial reputation; he might be able to recover attorney's fees, but only in case he had actually paid them, and then only for the work in causing the attachment to be dissolved, and not for the trial of the case. (See Attorneys' Fees.)

If the attachment was levied upon real estate the defendant may not recover for any impairment of credit, for his inability to secure a loan upon the land during the time the attachment is in force; but if the attachment was wrongful, he is entitled to the market value of the property during its detention, but not its value to him.

There is, however, a very serious question as to whether or not the defendant can recover anything at all, because he always has the right and opportunity to file a bond with the sheriff in release of attachment, and thus have his property delivered to him, and save himself any losses. The courts seem to be divided upon the right of a man to sit quietly by and see his property being taken and held by the sheriff, and not do anything to cause it to be released—and yet afterward complain of loss sustained because he was injured on account of his own quiescence.

If the debtor resides out of the state, and an attachment is levied upon property which he may own in this state, a judgment may be obtained against him through publication of summons and his non-appearance. His property may then be sold, and he may never know of it, until too late to protest, appear or appeal.

Great wrongs can be perpetrated by this writ, intentionally or otherwise. If the bondsmen are "men of straw" (not owning the property which they swear is theirs), or if they dispose of the property shortly after they sign the bond (as has been done many times), the party who looks to them for damages which he has suffered by reason of the levying of the writ—will obtain nothing.

In the Justices' Court the bond is not less than fifty, nor more than two hundred dollars. The bondsmen agree that they will pay all damage which the defendant may sustain—not exceeding the amount of this bond, provided the defendant wins in the action. In the Superior Court the amount is not less than \$200, and may be any sum which the clerk thinks is proper—usually about one-half the amount of the prayer of the complaint.

It frequently occurs that when personal property is attached it is found to be mortgaged. Oftentimes this mortgage is fraudulent, placed there for just such an occasion, though it is illegal to do so. But the attachment creditor, however, must pay off the mortgage in full, or else his attachment must be released. If he does so pay the mortgage, he succeeds to the rights of the holder, and the maker of the mortgage must pay him in the future. (See Third Party Claim.)

If there is a mortgage upon real property, the same rule would hold, but usually the equity is sufficiently large, so there is this value upon which the attachment rests. Upon any sale under execution, of real property which was attached, the person buying takes it subject to the previous rights of the mortgage, and subject to being foreclosed, unless he pays it off.

On an appeal, if goods have been taken in possession of the sheriff or constable by a writ of attachment—another writ must be taken out, with another bond, or else the property will be released to the defendant, by the attaching officer.

Auction: See Transfers; Sales; Personal Property; Pledge; Agency.

A sale by auction is a sale by public outcry to the highest bidder on the spot.

It is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

Until such announcement has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent to it, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

The employment, by the seller, of any person to bid at a sale by auction, without the knowledge of the buyer, and without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase. (See Rescission.)

When property is sold by auction, an entry made by the auctioneer, in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows: (1) To sell by public sale to the highest bidder; (2) To sell for cash only, except such articles as are usually sold on credit at auction; (3) To warrant in like manner with other agents to sell; (4) To prescribe reasonable rules and terms of sale; (5) To deliver the thing sold, upon payment of the price; (6) To collect the price; and, (7) To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the article on Sales.

Auctioneer: See also Auctions; Agency.

Any citizen of this state may become an auctioneer for the county in which he resides, and is authorized to sell real and personal property at public auction, on giving a bond for the faithful performance of his duties, and on the payment of the license.

In any city or town where there is no auctioneer, the sheriff or a constable of it is ex-officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex-officio auctioneer he is liable on his official bond.

Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a co-partner or clerk to hold such auction in his name and behalf, such employee to take and file with the clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

No auctioneer is permitted to transfer his license to any other person for any part of the time for which his license is issued; nor is any auctioneer permitted to use the license for the purpose of transacting an auction business in more than one store or specified place of business.

Automobile Law. See Agent; Master and Servant; Sales; Title; Highways; Liens; Employer and Employee.

The 1919 automobile law is 41 pages long, taking up too much space to be copied in a work of this kind. California has an auto to each seven persons of its population, and the laws pertaining to the operation of motor vehicles are well known—or, if not, the Motor Vehicle Department at Sacramento will send a copy to any one asking for it. There are some general rules, however, aside from the special law.

Every owner or manager of an automobile garage, or any agent or employee of such owner or manager, or any other person, having the care, custody or possession of any automobile, who takes, hires, runs, drives or uses such automobile, or who takes or removes from it any part of it, without the owner's consent, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Any person who throws or deposits any glass bottle, glass, nails, tacks, hoops, wire, cans or any other substance likely to injure any person, animal or vehicle upon any public highway in the State of California shall be guilty of misdemeanor.

Under the new Motor Vehicle Law, a valid title to automobiles cannot be given from one person to another in a sale unless a trans-

fer is registered with the Motor Vehicle Department, upon their forms provided.

Aviation: As yet there is no developed law upon this subject—a subject which involves every phase of the laws, both statewide and international. The earliest case in America was reported in New York, in which a balloon was descending near the ground, and its occupant called upon people to help him. The balloon dragged through a planted ground, and the people running after it trampled down the crops. The owner of the garden was awarded damages against the balloonist for the loss of his crops, whether made by the people or by the balloon. This would undoubtedly be the law today, when property or persons were injured by the act of the aviator or his machine—whether balloon or flying machine.

But the problem of what rights the owner of land has to prevent any one from flying in the air over his land, or to prevent him from so doing by injunction—will not be settled for many years, probably, as it is entirely a new field of law. It would seem that the old rule which said that the owner of the soil also controlled the earth beneath and the air above, must now be superseded by the additional words “provided that such control be limited to the exclusion only of that which may be dangerous to him or his property.” That is, he could not prevent—or collect damages from—a machine which merely flew over his land, but which did no harm, if the height was a reasonable one in which to fly. But if the machine flew too near the ground, frightening horses by its noise, annoying people or damaging his fields in landing—he would be entitled to damages as in a recent French case.

If an aviator dropped tools, or parts of the machinery, or bags of sand, etc., he would be liable in damages if person or property was injured.

Of course, if an aeroplane flew over the free sea, no one could ask for damage for such trespass—and, in such case, the operation of the plane would probably be governed by the laws of Shipping. If one flew over boundaries of countries, it would come under the branch of international law, especially if it were being used for smuggling, or bringing persons from one nation into another wrongfully. (See Shipping; Water Law; Agency; Master and Servant; Employer and Employee.)

Baggage: See Carriers; Hotels; Liens.

A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger; if such carrier is a proprietor of a stage line, he need not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

Luggage may consist of whatever the passenger takes with him for his personal use and convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the important necessities or to the ultimate purposes of his journey. Luggage within the meaning of this section shall include the samples, case, wares, appliances and catalogs of commercial travelers or their employers, used by them for the purpose of transacting their business and carried with them solely for that purpose, when securely packed and locked in substantial trunks or sample cases of convenient shape and weight for handling. No crate, cover or other protection shall be required for any bicycle carried as luggage, but no passenger shall be entitled to carry as luggage more than one bicycle.

The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

A common carrier must deliver every passenger's luggage, whether within prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passengers to whom it belongs. Except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.

Bail:

All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned. (See Arrest.)

Bailment: See Deposit of Personal Property.

Baler: See Hay Baler; Weights.

Bank Checks: See Checks.

Banker: See Liens; Negotiable Instruments; Banking Law; Checks.

Banking Law is contained in about 60 pages of the Code. It is highly technical and used almost wholly for the guidance of the banking institutions, under the direction of the Bank Commissioner. These phases of this law which seem to apply to every day business will be found under their respective headings, such as checks, forgeries, etc.

Bankruptcy:

While this law is not strictly a California law, but is a federal law, yet it is used to the same extent as if it belonged exclusively to this State.

This article was specially written for this work by Pierson Hall, Esq., of the Los Angeles Bar. Mr. Hall has appeared in over 500 bankruptcy cases during the past three years, in the Los Angeles District.

Each of the following steps is essential to the proper administration and successful termination of the proceedings:

- (1) Filing of the petition.
- (2) Adjudicating upon the petition.
- (3) Administration of the estate.
- (4) Discharge of the bankrupt.

Voluntary petitions may be filed in the district in which the applicant has resided for the greater part of the six months immediately preceding the filing. He may reside in any district for three months and one day, and may then file his petition in that district, regardless of where his creditors are located. But his residence must be bona fide. He cannot accumulate debts, and then move to another district long enough to give him the right to file a petition, for the purpose of beating his creditors, but intending to return to his real home.

Involuntary petitions must be filed in the district where the bankrupt resides.

Acts of bankruptcy by a person are (1) conveying, transferring, concealing, or removing, or permitting to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them; or (2) while insolvent, having transferred

any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; (a mortgage of either real or personal property is considered to be such a transfer); or, (3), having suffered or permitted, while insolvent, any creditor to obtain preference through legal proceedings, and not having vacated or discharged such preference at least five days before a sale or final disposition of any property affected by such preference; or (4) made a general assignment for the benefit of his creditors; or, being insolvent, applied for a receiver or trustee for his property; or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States; or (5) admitted in writing his ability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

INSOLVENT: Whenever the total value of a person's property (exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed, or removed, with intent to defraud, hinder or delay his creditors), at a fair valuation, shall not be sufficient in amount to pay his debts—he is said to be insolvent.

VOLUNTARY BANKRUPTS: Any person or corporation (except a municipal, railroad, insurance or banking corporation), may file a **VOLUNTARY** petition.

SCHEDULES: With every petition in bankruptcy there must be filed a set of schedules in triplicate, showing the amount and kind of property of the petitioner, the location of it, its money value in detail, a list of his creditors (showing their residence, if known that fact to be stated), the amounts due each of them, the consideration for them, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all properly signed and sworn to before an officer authorized to take oaths. These schedules may be amended if errors or omissions are made in them.

In voluntary bankruptcy petitions the bankrupt must prepare these schedules; but in involuntary proceedings, they are prepared by the creditors.

VOLUNTARY BANKRUPTCY OF A CORPORATION: A resolution by the Board of Directors must be regularly passed authorizing the filing the petition in bankruptcy, and a copy attached to the petition or filed with the papers in the case. The petition and schedules must be signed by one of the officers of the corporation (us-

ually the president, secretary or treasurer), but it is better that they be signed by both the president and the secretary.

But the bankruptcy of a corporation does not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory of the United States.

A PARTNERSHIP: During the continuation of the partnership business, or after its dissolution and before the final settlement of it, may be adjudged a bankrupt, and may file a voluntary petition.

The schedules should show the partnership liabilities and debts, and the assets. A partnership is treated as a distinct person, separate from each of the partners. The bankruptcy of a partnership does not carry with it the bankruptcy of each partner. The assets are sold and applied upon the payment of the debts; after paying these, the remaining assets (if any) are returned to the individual partners, or applied on the personal debts of each partner (if he is in bankruptcy).

In making out the schedules of a partnership, only the debts of the partnership are listed, while in making out the schedules of the individual, the debts of both the individual and the co-partnership are listed (because each member of the partnership is liable for the whole debts of the firm, unless it is a limited partnership).

When a partnership files a voluntary petition, it must be joined in by all the partners, otherwise it then becomes an involuntary petition, and subject to contest by those partners who have not joined in it, as well as the creditors.

Partners sometimes distribute the assets of a partnership among themselves, and then file a petition, listing the partnership debts alone, thinking to become absolved of all debts, partnership and personal. This accomplishes nothing. Each member of the partnership is liable for all its debts, even though the partnership should be discharged from these same debts.

HUSBAND AND WIFE are treated as a partnership. To obtain their discharge, separate proceedings must be carried on, except that each should describe and list the same debts and the community property in their schedules—as well as the separate property of either.

INVOLUNTARY BANKRUPTS: Any natural person (except a wage earner or a person engaged chiefly in farming or the tillage of the soil), any unincorporated company, and any moneyed business or commercial corporation (except a municipal, railroad, insurance

or banking corporation), owing debts to the amount of \$1000.00 or over, may be adjudged an involuntary bankrupt.

Three or more creditors who have provable claims against any person which amount in the aggregate not to exceed the value of securities held by such creditors of \$500.00 or over; or if all of the creditors of the debtor are less than twelve in number, then one of such creditors whose claim equals \$500.00 may file.

In computing such necessary number of creditors, those shall not be counted who (1) were employed by him at the time of filing the petition or (2) who are related by consanguinity or affinity within the third degree and have not joined in the involuntary petition.

Such a petition must be filed within four months after the commission of an act of bankruptcy, such as (1) the date of the recording or registering of the transfer or assignment (when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors, or for the purpose of giving a preference), or (2) a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or (3) if it is not, then from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property (unless the petitioning creditors have received actual notice of such transfer or assignment.)

When filed against a partnership (the same as against a person or a corporation), there is this difference—any member of the partnership may come in and contest the bankruptcy on the ground that the partnership is not solvent, because any one of its members or even all of them, as individuals, may be able to pay all the partnership debts; each member being liable for all the debts of the firm. Some courts have decided that a partnership cannot be adjudged an involuntary bankrupt unless each of its members is insolvent. One partner may file an involuntary petition against the partnership, and the other partners or any creditor may come in and defend against it. Each case with its different set of facts should be taken up with one skilled in Bankruptcy practice.

THE ADJUDICATION: In voluntary cases the adjudication is ordinarily made as a matter of course upon the proper showing in the petition and schedules.

On an adjudication of bankruptcy upon an involuntary petition, the bankrupt must prepare and file the schedules; in case of his failure, the Court has power to direct a creditor or other person to

prepare and file the schedules for the bankrupt: If the bankrupt is absent or cannot be found the creditors must file such schedule within five days after the adjudication.

The involuntary petition must be served upon the alleged bankrupt by a United States Marshal, or a person specially appointed for that purpose, and the alleged bankrupt is given 15 days (unless the Judge grants him further time) in which to answer.

A trial then takes place (as in any other action at law) at which the person is either adjudicated to be a bankrupt, or the petition is dismissed.

RECEIVERS:

Whenever such a petition is filed, and an application is made for a receiver, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge of it, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the alleged bankrupt, his or her personal representatives, of all costs, expenses, and damages occasioned by such seizure, taking and detention of the property.

If such petition be dismissed by the Court or withdrawn by the petitioner, the alleged bankrupt is allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. These amounts are decided by the Court, and are to be paid by the persons signing the bond.

ORDER OF REFERENCE: After the adjudication is made, an order called the Order of Reference is entered, directing the bankrupt to appear before a Referee in Bankruptcy, and afterwards all of the proceedings in the case are heard before the Referee, except those required by the bankruptcy act to be taken before the Judge; such as applications for discharge, or for the approval of a composition, or for an injunction to stay proceeding of a Court or officer of the United States or of a State. The Judge may refer any issue to the Referee.

DUTIES OF BANKRUPTS: The bankrupt shall (1) attend the first meeting of his creditors, if directed by the Court or a Judge of it to do so; (2) comply with all lawful orders of the Court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the Court; (5) execute to his trustee transfers of all his property in

foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days the schedules before described, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location of it, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration of it, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate. He must answer all these questions, except those which might tend to incriminate him, but none of the testimony shall be offered in evidence against him in any criminal proceeding.

But he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the Court, or a Judge of it, for cause shown. He shall be paid his actual expenses from the estate, when examined or required to attend at any place other than the city, town, or village of his residence.

DEATH OR INSANITY OF BANKRUPTS: The death or insanity of a bankrupt shall not suspend the proceedings, but they shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane. In case of death, the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

PROTECTION AND DETENTION OF BANKRUPTS: A bankrupt is exempt from arrest upon civil process except in the following cases: (1) When issued from a Court of Bankruptcy for con-

tempt or disobedience of its lawful orders; (2) when issued from a State Court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

At any time after the filing of a petition by or against a person (and before the expiration of one month after the qualification of the trustee), upon satisfactory proof by the affidavits of at least two persons that a bankrupt is about to leave the district in which he resides (or has his principal place of business) to avoid examination, and that his departure will defeat the proceedings in bankruptcy, the Judge may issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the Court for examination. If upon hearing the evidence of the parties it appears to the Court that the charges are true and that it is necessary, he shall order the marshal to keep the bankrupt in custody not exceeding ten days, but not to imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the Court, and for his obedience to all lawful orders made in reference to it.

EXAMINATION OF BANKRUPT'S WIFE AND OTHER WITNESSES: Upon application of any officers, bankrupt, or creditor, a Court of Bankruptcy may, by order, require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the Judge of any State Court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration; Provided, that the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

CONTEMPTS BEFORE REFEREES: A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place of it as to obstruct it; (3) neglect to produce any pertinent document, after having been ordered to do so; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after taking the oath, refuse to be examined according to law. But no person shall be

required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

The referee shall certify the facts to the judge, if any person shall do any of the things forbidden. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the Court of Bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Court.

OFFENSES: (a) A person shall be punished by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

ADMINISTRATION OF ESTATE: In general the administration of the estate consists of the sale of all of the property of the bankrupt, and the distribution of its proceeds to the creditors.

Before the referee calls the first meeting of creditors, it is the duty of the bankrupt to deposit with the referee the money that it will necessarily cost the referee to advertise the meeting, mail notices to creditors, and other general expenses. (About \$11 to \$15.)

The rules of the District Court for the different districts fix the amount collectable by the referee for calling the first meeting, as well as all amounts collectable by the referee for expenses.

MEETINGS OF CREDITORS: All meetings of creditors are held at the office of the referee.

After the first, other meetings of creditors may be held at any time upon call of the Court or referee. If one-fourth, or more, in number of the creditors who have filed and proven their claims make such a request in writing, a meeting must be called.

CALLING FIRST MEETING OF CREDITORS: After the making of the order of reference, the referee should call a first meeting of the creditors of the bankrupt, at the county seat of the

county in which the bankrupt has had his principal place of business, or has resided; or if that place is manifestly inconvenient, then at such place as is most convenient to all the parties.

NOTICES TO CREDITORS: (a) Creditors shall have at least ten days notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

NOTICE TO CREDITORS OF FIRST MEETING: Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the Court may direct; the last publication shall be at least one week before the date fixed for the meeting. Other notices may be published as the Court shall direct.

OBJECT OF FIRST MEETING OF CREDITORS: The object of the first meeting of creditors is to select a trustee, examine the bankrupt, and other witnesses respecting the acts, conduct and property of the bankrupt, file claims against the estate, and to take such other steps as may be pertinent and necessary for the promotion of the best interests of the estate and affairs of the bankrupt.

CREDITORS RIGHTS AND DUTIES: Before creditors can participate in any meeting of creditors and have a right to object to any proceeding, it is necessary for them to file their claims. Before they can vote upon the selection of a trustee, or other matter, their claims must be allowed by the referee or Court. The prudent thing to do is to file the creditors' claim at once (unless perhaps, there are no assets in the estate, and the filing would be a needless and useless expense).

Proof of claims consist of a statement under oath, in writing, signed by a creditor, describing the claim, its consideration, whether any, and, if so, what securities are held for it; whether any,

and, if so, what payments have been made on it; that the sum claimed is justly owing from the bankrupt to the creditor. A form is prescribed by the Supreme Court of the United States to be used in filling out claims. While proving a claim is apparently a simple matter, it should be attended to with great care, as it may be disallowed by technical objections.

TO PROVE CLAIMS: Claims cannot be proved against a bankrupt estate after one year from the adjudication; or if they are liquidated by litigation and the final judgment on them is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment. But the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

CLAIMS FOUNDED ON NOTE OR OTHER WRITTEN INSTRUMENT: Whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, must be filed with the proof of claim. If it is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction must be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the Court, upon leaving a copy.

TIME WHEN ALLOWED: Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the Court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued.

OBJECTIONS TO CLAIMS: A properly prepared claim establishes a prima facie case for the person filing the claim, and the burden of disproving it rests upon the person objecting to the allowance of the claim.

Objections are heard and determined as soon as the convenience of the Court and the best interests of the estates and the claimants permit. Upon filing objections, it is the duty of the referee to set it down for hearing, notify the claimant and objector of the date, and proceed to hear the issue and allow or disallow the claims. The referee may disallow a claim on his own motion, on the ground that it does not show facts sufficient on its face to constitute a valid claim.

Claims which have been allowed may be reconsidered for cause and ~~reallowed or rejected~~ in whole or in part (according to the

equities of the case), before the estate has been closed, but not after.

VOTERS AT CREDITORS' MEETINGS: Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein noted.

VOTING POWER OF SECURED CREDITORS: Claims of secured creditors and those who have priority may be allowed, to enable such creditors to participate in the proceedings at creditors' meetings held before the determination of the value of their securities or priorities, but shall be allowed for such sums only as may to the Courts seem to be owing, over and above the value of their securities or priorities.

Creditors holding claims which are secured or have priority are not, in respect to such claims, entitled to vote at creditors' meetings; nor are such claims counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

Upon application to the Court, unliquidated claims may be liquidated in such manner as it shall direct, and may afterward be proved and allowed.

DEBTS WHICH HAVE PRIORITY: The debts to have priority, and to be paid in full out of bankrupt estates, and their order of payment, are (1) the actual and necessary cost of preserving the estate before filing the petition; (2) the filing fees paid by creditors in involuntary cases and the reasonable expenses of recovery, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of his estate by the efforts and at the expense of one or more creditors; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the Court may allow; (4) wages due workmen, clerks or servants which have been earned

within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

LIENS: Unless claims would not have been valid liens as against the claims of the creditors of the bankrupt, they are not liens against his estate.

A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity (including an attachment or a judgment by confession), which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person, shall be dissolved by the adjudication, if (1) it appears that said lien was obtained and permitted while the defendant was insolvent, and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited by it had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of the Bankruptcy Act, or (4) if the dissolution of such lien would act against the best interests of the estate of such person and same should not be dissolved, but the trustee shall be substituted to the rights of the holder of such lien and empowered to perfect and enforce those rights.

A set-off or counterclaim should not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

The decisions are that the mere act of filing a petition in bankruptcy is notice to all the world of the fact, and automatically releases attachments and liens obtained through legal proceedings.

ATTACHMENTS AND EXEMPTIONS LEVIED WITHIN FOUR MONTHS: All levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months before the filing of a petition in bankruptcy against him, are null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien, is to be wholly discharged and released from them, and passes to the trustee as a part of the

estate, unless the Court, on due notice, shall order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate. The court may order such conveyance as shall be necessary to carry these provisions into effect. These provisions are not effective if they have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser, for value, who shall have acquired it without notice or reasonable cause for inquiry.

PREFERENCES: It very frequently happens and it is a very natural thing, that a person who is in a failing condition, or who is in contemplation of bankruptcy, desires to protect certain of his creditors by paying them in full, and transfers to them a portion of his property, either directly, or by giving a mortgage or by procuring or permitting a judgment and execution to be entered and issued against him. This constitutes what is known as a preference; (1) if done within four months before bankruptcy, and (2) if the person receiving the property or to be benefited by the transfer is enabled to obtain a greater percentage of his debt than other creditors of the same class, and (3) if the person receiving the property or to be benefitted by the transfer has reasonable cause to believe that the bankrupt was insolvent—the transaction can be set aside by the trustee, and the property recovered for the benefit of the estate.

If a creditor has been preferred, and afterwards in good faith gives the debtor further credit (without security of any kind) for property, which becomes a part of the debtor's estates,—the amount of such new credit remaining unpaid at the time of the adjudication may be set off against the amount which would otherwise be recoverable from him.

FRAUDULENT TRANSFERS: All conveyances, transfers, assignments, or encumbrances of his property, or any part of them, made or given by a person adjudged a bankrupt, and within four months before the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, are null and void as against the creditors of such debtor (except as to purchasers in good faith and for a present fair consideration). All property of the debtor thus conveyed, transferred, assigned, or encumbered (if he is adjudged a bankrupt,

and it is not exempt from execution and liability for debts by the law of the State in which he resides), remains a part of the assets and estate, and passes to his trustee, whose duty it is to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. All conveyances, transfers or encumbrances of his property made by a debtor at any time within four months before the filing of the petition against him, and while insolvent (which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District, in which such property is situate), are deemed null and void under the Bankruptcy Act. Such property passes to the trustee and may be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

The claims of creditors who have received preferences, or to whom conveyances, transfers, assignments, or incumbrances, in fraud of creditors, have been made or given, should not be allowed unless such creditors first surrender such preferences, conveyances, transfers, assignment, or incumbrances.

A TRUSTEE is selected by vote of the creditors at their first meeting, by a majority vote in number and amount. If they fail to do so, the referee shall appoint a trustee. Where the bankrupt ~~has an estate of some value, or where the~~ proceedings involve large sums, it is customary for creditors to combine their voting rights, so that they may secure a trustee who is favorable to them. The power of a trustee is so extensive, that it is considered a great advantage to have one whose interests are favorable to those of a certain group of creditors.

BONDS OF TRUSTEES: Before trustees enter upon the performance of their official duties (and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit), they must qualify by entering into bond to the United States, with such sureties as shall be approved by the Courts, conditioned for the faithful performance of their official duties.

As soon as he enters upon his duties, the trustee shall prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the Court (within twenty days after receiving the notice of his appointment) of the articles set off to the bankrupt by him, with the estimated

value of each article. Any creditor may take exceptions to the determination of the trustee within twenty days after filing this report.

DUTIES OF TRUSTEES: Trustees are required to, (1) account for and pay over to the estates under their control all interest and money received by them upon, or from property of such estates; (2) collect and reduce to money the property of the estates (under the direction of the Court), and close up the estate as soon as is compatible with the best interests of the parties in interest; (3) deposit all money received by them in one of the banks specially designated to accept bankrupt funds; (4) disburse money only by check or draft on such depository; (5) furnish such information concerning the estates of which they are trustees and their administrations as may be requested by parties in interest; (6) keep regular accounts, showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the Courts fifteen days before the day fixed for the final meeting of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the Courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months afterward, unless otherwise ordered by the Courts; (11) set apart the bankrupt's exemptions and report the items and estimated value of them to the Court as soon as practicable after appointment.

TITLE TO PROPERTY: (a) The trustee upon his appointment and qualification, is vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt (except as to exempt property), in all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which before the filing of the petition he could by any means have transferred, or which might have been levied upon and sold under judicial process against him; and (6)

rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

The title to property of a bankrupt estate which has been sold, as described, shall be conveyed to the purchaser by the trustee.

In general it is the duty of the trustee to take charge of, and conduct the administration of the estate under the supervision of the referee; He must see that the property is inventoried and appraised, and insured; He must conduct all sales and pay all dividends and be responsible for all of the money of the estate.

SALES: He should realize as much as possible from the sale of property of bankrupt estates and consequently nearly all sales are made to the highest bidder, either at public auction, or privately, by the trustee. The practice in Los Angeles County at this time of writing is substantially as follows:

The trustee is granted specific authority to sell, by the referee, after a meeting of creditors. In the notice calling their first meeting of creditors, notice is given by the referee that he will consider an application of the trustee to be appointed to sell the property of the estate. This application is usually made in written form at the first meeting of creditors and granted by a written order, authorizing the trustee to sell the property at private sale or public auction. If the authorization is given to sell at private sale, the sale is subject to the confirmation of the referee; and on the day of confirmation higher bids may be made; the highest one is approved by the referee and the sale confirmed, and the trustee directed to deliver the property or a transfer of it. A certified copy of the order of the referee is usually looked upon as being the best evidence of a transfer of title.

SALE AT AUCTION: When the sale is had at public auction, it is usually not subject to the confirmation of the referee if each article is sold for seventy-five per cent of its appraised value.

SALE OF MORTGAGED PROPERTY: Where either real estate or personal property is subject to a mortgage or lien of any kind, the referee may order it sold free and clear of liens, if it appears that there is a reasonable equity in the property, or if by the sale there can be any benefit realized for the estate.

Upon the sale free and clear of liens the amount of the mortgage or lien is paid by the trustee out of the proceeds of the sale. A sale of property in the bankruptcy court free and clear of liens

is the quickest way for a lienholder to get his money and is the best title in the world, because it eliminates any time for rights of redemption to run, and is in effect a decision by the United States District Court that the title is vested in the purchaser.

SALE SUBJECT TO LIENS: A sale of property subject to liens is quite frequently resorted to, especially where there is only a small equity in the property. The holder of the lien purchases the title of the bankrupt saving expense of foreclosure and time allowed for redemption.

TRANSFERS VOIDABLE BY TRUSTEE: The trustee can set aside any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value before the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

RIGHT OF TRUSTEE TO ENFORCE LIEN: Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor (who afterwards becomes a bankrupt), the trustee shall be substituted to and may enforce such rights of such creditor for the benefit of the estate.

ACCOUNTS AND PAPERS OF TRUSTEES: The accounts and papers of trustees shall be open to the inspection and examination of officers, creditors and all parties in interest.

Within thirty days after the adjudication, the trustee shall file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded, in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed. The filing fee and this referee's fee shall be paid out of the estate of the bankrupt as a part of costs.

DEATH OR REMOVAL OF TRUSTEES: The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but may be proceeded with or defended by his joint trustee or successor, in the same manner as though it had been commenced or

was being defended by such joint trustee alone or by such successor.

COMPROMISE: With the approval of the Court, the trustee may compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

EXPENSES OF ADMINISTRATING ESTATES: The actual and necessary expenses incurred by officers in the administration of estates shall be reported in detail under oath, and examined and approved or disapproved by the referee. If approved, they shall be paid or allowed out of the estates in which they were incurred.

DECLARATION AND PAYMENT OF DIVIDENDS: Dividends of an equal per cent are declared and paid on all allowed claims, except such as have priority or are secured.

The first dividend should be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been allowed (but probably will be), equals five per cent or more of such allowed claims. Dividends, after the first, may be declared upon like terms as the first, and as often as the amount equals ten per cent or more, and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order. The first dividend shall not include more than fifty per cent of the money of the estate, in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed.

The final dividend shall not be declared within three months after the first dividend is declared.

The rights of creditors who have received dividends or in whose favor final dividends have been declared, are not affected by the proof and allowance of claims after the date of such payment, or declarations of dividends; but the creditors proving and securing the allowance of such claims are entitled to receive dividends equal in amount to those already received by the other creditors, before any further dividends are paid.

Whenever a claim shall have been reconsidered and rejected (in whole or in part), upon which a dividend has been paid,—the trustee may recover from the creditor the amount of the dividend

received upon the claim if rejected in whole, or the proportional part of it, if rejected only in part.

RECORDS OF REFEREE: When the case is concluded, the book or books containing the record of the proceedings is certified by him, and transmitted to the Court of Bankruptcy, together with such papers as are on file, and there remain as a part of the records of the Court.

INSPECTION OF REFEREE'S RECORDS: It is the duty of referee to furnish information concerning any estate in process of administration before him as may be requested by the parties in interest, and to allow an inspection or examination of any papers or documents in his charge as referee.

DISCHARGE: At any time after one month after the adjudication in bankruptcy, the bankrupt may be discharged, if he has complied with all orders of the court in the meantime. His application must be made within twelve months (which can be extended by the judge for six months more, upon petition and affidavits showing good cause for such extension). If application is made later than this, the court has lost its jurisdiction, and no discharge can be made. The creditors then have the right to proceed to collect in the State courts, as if no bankruptcy had occurred, if the statute of limitations has not run against their claims. The statute of limitations is not suspended during bankruptcy.

The hearing of this petition for discharge will be in a reasonable time, upon notice to all concerned.

The discharge will be granted, unless the bankrupt has (1) committed an offense punishable by imprisonment; (2) destroyed, removed or failed to keep books of account or records from which his financial condition can be found—all with the intent to conceal his financial condition; (3) obtained money or property upon a materially false statement in writing; (4) transferred, removed, destroyed, or concealed, or permitted to be removed, concealed, or destroyed, any of his property, within four months immediately preceding the filing of the petition, and with the intent to hinder, delay or defraud his creditors; (5) been granted a discharge in voluntary bankruptcy within six years; (6) refused to obey any lawful order or answer any material question approved by the court, during the proceedings.

Discharge does not absolve a bankrupt from the payment of the following debts: (1) Taxes—United States, State, county, municipal or district; (2) liabilities for obtaining money by false pretense or false representations, or liabilities for wilful and malicious injuries to the person or property of another; (4) those debts which have not been scheduled, unless the creditor had notice or actual knowledge of the proceedings; (5) debts which were created by the bankrupt's fraud, embezzlement, misappropriation, or defalcation while acting as an officer, or in any fiduciary capacity.

Discharge of a bankrupt does not release one who is a co-debtor with him, or who is a guarantor, or a surety for such bankrupt.

REVOKATION OF DISCHARGE: The discharge will be set aside, if it is made to appear (upon trial) that the discharge was granted through the fraud of the bankrupt, and that the knowledge of the fraud has come to the attention of the creditors since the granting of the discharge, and that the actual facts would not warrant the discharge.

Battery: See Assault and Battery.

Bicycle: See Carrier; Baggage.

Bigamy:

Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

The last section does not extend: (1) To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor, (2) To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Bigamy is punishable by a fine not exceeding five thousand dollars and by imprisonment in the state prison not exceeding ten years.

Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine of not less than five thousand dollars, or by imprisonment in the state prison not exceeding ten years.

Bills and Notes: See Negotiable Instruments.

Bill of Exchange: See Negotiable Instruments, ¶3162, 3199, 3107, 3210, 3211, 3255.

Bill of Lading Act (Uniform): Passed by 1919 Legislature, in order to make the bill of lading laws similar in form to those now in use in most of the States. (See Negotiable Instruments; Warehousemen.)

2126. Bills of lading issued by any common carrier shall be governed by this article.

2126a. Every bill must embody within its written or printed terms—(a) The date of its issue; (b) The name of the person from whom the goods have been received; (c) The place where the goods have been received; (d) The place to which the goods are to be transported; (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person; (f) A description of the goods or of the packages containing them, which may, however, be in such general terms as are referred in to section 2128; and, (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed on it immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured by it for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

2126b. A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—(a) Be contrary to law or public policy, or (b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

2126c. A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.

2126d. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this article.

2126e. Negotiable bills issued in this state for the transportation of goods to any place in the United States or the continent of

North America, except Alaska, shall not be issued in parts or sets.

If so issued, the carrier issuing them shall be liable for failure to deliver the goods described in them to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

2126f. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

2126g. A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

2126h. The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser of it of any rights or equities of such person in the goods.

2126i. Except as otherwise provided in this article where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

2127. A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder of it, if such demand is accompanied by—(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods; (b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods if the bill is negotiable; and, (c) A readiness and willingness to sign, when the goods are delivered, an

acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

2127a. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—(a) A person lawfully entitled to the possession of the goods, or (b) The consignee named in a non-negotiable bill for the goods, or (c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

2127b. Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or (b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods. A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

2127c. Except as provided in section 2128k, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill

before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled to it.

2127d. Except as provided in section 2128k, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—(a) To take up and cancel the bill, or (b) To place plainly upon it a statement that a portion of the goods had been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled to it.

2128. Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

2128a. Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

2128b. A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

2128c. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods, according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

2128d. If more than one person claims the title or possession of the goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate.

2128e. If someone other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

2128f. Except as provided in the two preceding sections and in section 2127a, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

2128g. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to—(a) The consignee named in a non-negotiable bill, or (b) The holder of a negotiable bill, who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue. If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity or in a certain condition, or it is stated in the bill that packages are said to contain goods of a

certain kind or quantity, or in a certain condition, or that the contents or condition of the packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. All carriers must issue to shippers of carload freight from agency stations a clean bill of lading at the request of the shipper and in such cases shall discontinue the practice of noting on bill of lading "Shipper's load and count." Upon request of shipper of carload freight from a non-agency station, the carrier shall send a man to check the loading and shall issue a clean bill of lading, the expense, except transportation of man to and from point of loading to perform service of checking, to be borne by the shipper.

2128h. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

2128i. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means of it as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

2128j. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated

so far as they are allowed by law and the contract between the consignor and the carrier.

2128k. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they are shipped, even if such a bill be negotiable.

2129. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

2129a. A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

2129b. A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented by it.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

2129c. A negotiable bill may be negotiated by any person in possession of it (however such possession may have been acquired) if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in form that it may be negotiated by delivery.

2129d. A person to whom a negotiable bill has been duly negotiated requires by it—(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and (b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

2129e. A person to whom a bill has been transferred but not negotiated acquires by it as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Before the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified, and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

2129f. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

2129g. A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants—(a) That a bill is genuine; (b) That he has a legal right to transfer it; (c) That he has knowledge of no fact which would impair the validity or worth of the bill; and, (d) That he has a right to transfer the title of the goods, and that the goods are merchantable or for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby. In the case of an

assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

2130. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

2130a. A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

2130b. The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value for it, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

2130c. Where a person having sold, mortgaged, or pledged goods which are in the carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation of it by that person under any sale, pledge, or other disposition of it to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

2130d. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows: (a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer. (b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, ex-

cept for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract. (c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer. (d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is endorsed in blank or to the buyer by the consignee named thereon, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named in it, or of the goods, without notice of the facts making the transfer wrongful.

2130e. Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming: (a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill; (b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment, of the draft before the buyer should be entitled to receive or retain the bill. The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

2130f. Where a negotiable bill has issued for goods, no seller's

lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

2130g. Except as provided in section 2130f, nothing in this article shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this article, as against one who for value and in good faith purchased from the owner, immediately before the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

2131. Any officer, agent, or servant of a carrier who, with intent to defraud, issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

2131a. Any officer, agent, or servant of a carrier who, with intent to defraud, issues or aids in issuing a bill for goods, knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

2131b. Any officer, agent, or servant of a carrier who, with intent to defraud, issues or aids in issuing a duplicate or additional bill for goods in violation of the provisions of section 2126f, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

2131c. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such

goods a negotiable bill which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

2131d. Any person who, with intent to deceive, negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

2131f. Any person who, with intent to defraud, issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face of it, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

2132. In any case not provided for in this article, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern.

2132a. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Bill of Particulars: See Actions.

Bill of Sale is an instrument by which the title is passed to Personal Property, although one is not necessary if the price is paid and the property at once delivered. (See Sales; Title; Transfer; Personal Property.)

Bills in a Set: See Negotiable Instruments, ¶3259; Bill of Lading, 2126e.

Blue Sky Law: See Corporations; Monopoly.

No company (meaning domestic and foreign corporations, associations, joint stock companies, partnerships and trustees, except corporations subject to the Banking, public utility, insurance, or building and loan laws) shall sell, offer for sale, negotiate for the sale of, or take subscriptions for, any security of its own issue until it shall have first applied for and secured from the Commissioner of Corporations a permit so to do.

In the application there must be stated the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its assets and liabilities, a detailed statement of the plan on which it proposes to transact business, a copy of any security it proposes to issue, and any contract, prospectus or advertisement it proposes to make or publish, with such additional information which the Commissioner may require, either then or from time to time.

Corporations must also file a copy of the minutes, of the articles of incorporation, and of the by-laws. No person or company shall act as an agent or broker until the Commissioner shall issue a certificate authorizing this. An application must be made, giving the name and address of the applicant, and a statement of facts showing that he has a good business reputation.

No advertisement shall be published concerning any security to be issued by any company until the Commissioner shall issue a permit authorizing the sale of such security, nor shall any such advertisement be published unless a copy of it is sent to the Commissioner and if he notifies the party in writing that, in his opinion, the advertisement contains a statement which is false or misleading, it must not be published.

From time to time these companies or brokers, if required by the Commissioner must make and file reports showing their sales and financial condition. All these papers, etc., are open to public inspection, unless the Commissioner in his discretion desires to withhold them.

Securities issued without permits are invalid, and the company issuing them is punishable by a fine not exceeding \$1000; while any person knowingly violating any portion of this law may be punished by imprisonment not exceeding five years in states prison, or two years in the county jail, or a fine not exceeding \$5000, or both fine and imprisonment.

For filing these various papers the Commissioner collects various fees, beginning at \$10, plus 1-20 of 1 per cent., for securities to an amount between \$20,000 and \$50,000 intended to be issued; for filing an application for brokers' certificate \$5.00, for agent \$1.00, also \$10.00 per day and expenses for any investigation or examinations, etc.

Boarding House: See Inn; Hotel; Liens.

Bond: See Limitations.

Bottomry: See Insurance; Contracts; Ships; Freight; Wrecks.

1. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage or period.

2. The owner of a ship may hypothecate it, or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

3. The master of a ship may hypothecate it or its freightage, upon bottomry, only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship, and this only when the master cannot otherwise relieve the necessity of the ship, and is unable to reach adequate funds of the owner, or to obtain any funds upon the personal credit of the owner, and when previous communication with the owner cannot be had.

4. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by law upon other contracts. But a competent court may reduce the rate when it appears to be unjustifiable and exorbitant.

5. A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, even though it was not necessary for the master to hypothecate the ship—provided that the lender did in good faith believe in the need for such circumstances, and had made diligent and due inquiry.

6. If any security other than the ship or freightage is given in a contract of bottomry, such stipulation is void.

7. In case of a total loss of the ship or freightage, the lender upon bottomry can recover nothing. In any risk to which he made the loan in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

8. Unless it is otherwise specified, and even though a term of credit is specified in the contract, a bottomry loan becomes due

upon the termination of the risk. (See also Liens; Shipments; Seamen.)

Boycott:

Boycott is the right to the concerted withdrawal of social and business intercourse, and the right (by all legitimate means), of fair publication, and fair oral or written persuasion, to induce others interested in or sympathetic with their cause, to withdraw their social or business patronage from the employer. They may even request of another that he withdraw his patronage, and may use the moral intimidation and coercion of threatening a like boycott against him if he refuses to do so.

Any act of boycotting which tends to impair the constitutional right, freely to labor, by means passing moral suasion—and playing by intimidation upon the physical fears—is unlawful.

Brands: See Trade Marks.

Brokers: See Agents; Factors; Employers; Master and Servant; Personal Property Brokers; Negotiable Instruments, §3150; Real Estate Agents.

Bulklaw: Every transfer of personal property (except a thing in action, or a ship or cargo at sea or in a foreign port), and every lien on it except a mortgage, when allowed by law, and a contract of bottomry or respondentia is conclusively presumed to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves cumfrances in good faith subsequently to the transfer, provided it is made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the thing transferred; provided, however, that the provisions of this section shall not apply to the transfers of wine in the wineries or wine cellars of the makers or owners of it, or other persons having possession, care, and control of the same, and the pipes, casks, and tanks in which the said wines are contained, which transfers shall be made in writing, and verified in the same form as provided for chattel mortgages, and which shall be recorded in the book of miscellaneous records in the office of the county recorder of the county in which the same are situated; provided, also that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be

substantially a whole) in bulk, or in any manner otherwise than in the ordinary course of trade and in the regular and usual practice and method of business of the vendor, transferrer, or assignor, and the sale, transfer, assignment or mortgage of the fixtures or store equipment of a merchant will be conclusively presumed to be fraudulent and void as against the existing creditors of the seller, transferrer, assignor or mortgagor, unless at least seven days before the consummation of such sale, transfer, assignment or mortgage the seller, transferrer, assignor or mortgagee, shall record in the office of the county recorder in the county or counties in which the said stock in trade, fixtures, or equipment are situated a notice of said intended sale, transfer, assignment or mortgage, stating the name and address of the intended seller, transferrer, assignor or mortgagor, and the name and address of the intended buyer, transferee, assignee, or mortgagee and a general statement of the character of the merchandise or property intended to be sold, assigned, transferred or mortgaged, and the date when and the place where the purchase price or consideration if any there be, is to be paid; provided, nevertheless, that if such intended sale is to be at public auction the notice above required to be recorded shall state that fact, the time, terms, and place of said sale, the names and addresses of the seller and auctioneer, and a general statement of the character of the merchandise or property intended to be sold; but such sale shall in no event occur within seven days of the date of recordation of said notice; provided further, that the provisions of this section shall not apply or extend to any sale, transfer, assignment or mortgage made under the direction or order of a court of competent jurisdiction or by any executor, administrator, guardian, receiver or other officer or person acting in the regular and proper discharge of official duty, or in the discharge of any trust imposed upon him by law, nor to any transfer or assignment, statutory or otherwise, made for the benefit of creditors generally, nor to any sale, transfer, assignment or mortgage of any property exempt from execution.

This means that such sale, or mortgage is void as against the debtor and his creditors, and they may bring suit and attach the goods, or the fixtures, even though title may then be in the buyer. But if the buyer in his turn has again sold to an innocent purchaser for value without notice, the original transaction is not void as to

him—and the sale to him would be good, and the attachment would not hold.

Business Day is any day except a holiday. (See Holidays.)

Cancellation of Written Instrument: See Negotiable Instruments, ¶3204; Contracts.

Carriers: See also Lien; Bill of Lading; Ships; Jettison; Freight; Luggage.

1. The contract of Carriage is a contract for the conveyance of property, persons, or messages from one place to another.

2. Carriage is either: (a) Inland; or, (b) Marine.

Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inland carriers.

Rights and duties peculiar to carriers by sea are defined by acts of Congress.

3. A carrier is entitled to a reasonable compensation, and no more, which he may require to be paid in advance. If payment is refused, he may refuse to carry.

He must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

He must always give preference in time (and may give a preference in price) to the United States and to this state.

He must (if able to do so) accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

4. Every one who offers to the public to carry persons, property, or messages (excepting only telegraphic messages), is a common carrier of whatever he thus offers to carry.

5. Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this article. (See Employees.)

A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

Persons operating an elevator in lifting passengers are to be treated as common carriers of passengers (even though no charge

is made), and the same duties and responsibilities rest on them as to care and diligence as upon other carriers. Though they are not insurers of the absolute safety of the passengers, they are bound to the utmost care and diligence of very cautious persons (as far as human care and foresight can go), and are responsible for injury caused by the slightest neglect against which human prudence and foresight might have guarded.

6. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

A carrier of persons for reward is bound to provide vehicles safe and fit for the purpose to which they are put, and is not excused for default in this respect by any degree of care.

A carrier of persons for reward must not overcrowd or overload his vehicle.

A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

7. A CARRIER FOR HIRE has a lien for freightage and for services rendered at request of shipper or consignee in and about the care, transportation and preservation of the property, and he also has a lien for money advanced at the request of the shipper or consignee to discharge a prior lien.

8. Property is called freight; the reward, if any, to be paid to its carriers is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to

all matters except the delivery of the freight, as to which he must comply with the direction of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

If there is no usage to the contrary at the place of delivery, freight must be delivered as follows: (a) If carried upon a railway owned or managed by carrier, it may be delivered at the station nearest to the place to which it is addressed; (b) If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or, if there is no wharf, on board a lighter alongside the ship; or, (c) In all cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found. (See F. O. B.)

If, for any reason, a carrier does not deliver the freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the freight in safety (upon his responsibility as a warehouseman), until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give notice by letter dropped in the nearest postoffice.

If the consignee does not accept and remove freight within a reasonable time after carrier has fulfilled his obligations to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice to the consignee of such storage.

A carrier may require his freightage to be paid upon his receiving the freight, but if he does not demand it then, he cannot require payment until he is ready to deliver the freight to the consignee.

The consignor of freight is presumed to be liable for the freightage; but if the contract between him and carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, the carrier cannot afterward recover the freightage from the consignor.

The consignee of freight is liable for the freightage, if he ac-

cepts the freight with notice of the intention of the consignor that the consignee should pay it.

No freightage can be charged upon the natural increase of freight.

If freightage is proportioned by a bill of lading or other contract made between the consignor and carrier, the carrier is entitled to payment according to the apportionment, for so much as he delivers.

If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

If freight is carried further, or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee at the place and time of its arrival.

If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after the demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable for it.

In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on Deposit and Service.

If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges on it, he may cause the property to be sold in open market to satisfy his lien for freightage. (See Liens.)

A carrier has a lien for freightage, which is regulated by the article on Liens.

9. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

He cannot be exonerated (by any agreement made in anticipation) from liability for the gross negligence, fraud, or wilful wrong, of himself or his servants. (See Liquidated Damages.)

A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage (with a knowledge of its terms), assents to the rate of hire, the time, place, and manner of delivery in it stated; and also assents to the limitations stated in it upon the amount of the carrier's liability in case of property carried in packages, trunks or boxes, if lost or injured (when the value of such property is not named); and also assents to the limitation stated in it to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instruments can be manifested only by his signature to the same.

A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

Unless the consignor accompanies the freight and retains exclusive control of it, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from the liability, for the loss or injury from any cause whatever, except: (a) An inherent defect, vice, or weakness, or a spontaneous action, of the property itself; (b) The act of a public enemy of the United States, or of this state; (c) The act of the law; or, (d) Any irresistible superhuman cause.

A common carrier is liable, even in the cases excepted by the last section, if his want of ordinary care exposes the property to the cause of the loss.

He is liable for delay only when it is caused by his want of ordinary care and diligence.

A common carrier of gold, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any package of such arti-

cles, unless he has notice, upon his receipt of it, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

10. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

He must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

He may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

He may demand the fare of passengers, either at starting or at any subsequent time.

A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling-house.

A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent in addition to the regular rate.

After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

Cartwright Law: See Monopolies.

Cattle: See Liens; Estrays; Larceny.

Causa Mortis: See Gifts.

Caveat Emptor: "Let the Buyer Beware." An old business rule, which no longer is a maxim of law. (See False Representations; Fraud.)

Chattels: See Personal Property; Chattel Mortgages.

Chattel Mortgages: See Personal Property; Community Property; Mortgages; Attachment; Crops; Transfer; Bill of Lading, 2130a, 2130c; Bankruptcy.

A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and encumbrancers of the property in good faith and for value, unless the instrument is

accompanied by an affidavit of all the parties to it, specifically stating that the mortgage is made in good faith, and without any design to hinder, delay or defraud creditors. The following words are sufficient for the purpose, and after being sworn to, must be attached to the mortgage and recorded with it:

"A. Bee, mortgagor in the foregoing mortgage, and C. Dee, mortgagee in said mortgage, being duly sworn, each for himself, deposes and says, that the aforesaid mortgage is made in good faith, and without any design to hinder, delay, or defraud creditors."

No particular form of instrument is necessary, but the property must be described in such a manner as to make identification possible with certainty, so that even a stranger could pick out the property mortgaged with nothing but the written description to guide him. While this may not at all times be possible, still it should be aimed at, for if the things mortgaged cannot be identified with sufficient certainty by the written description, aided by oral evidence, then the mortgage is so uncertain as to be useless.

A mortgage can be created, renewed, or extended, only by writing, executed with all the formalities required in the grant of real property. There may be such things as oral mortgages, but not in this state.

Mortgages may be made upon all growing crops, including grapes and fruit. Rolling stock of a railroad, steamboats, machinery, steam engines and boilers, mining machinery. Printing presses, type-setting machines, and all printing materials and accessories. Professional libraries, and all instruments of surveyors, physicians and dentists, and all instruments, furniture and fixtures of a photograph gallery. Upholstery, furniture and household goods, pianos and organs, oil paintings and works of art, all furniture and equipments usually found in a hotel, furniture, fixtures, bars and appurtenances of saloons. Machinery and utensils of wineries, also wines, brandy, syrups, and cooperage. Cattle, horses, mules, swine, sheep, goats, fowls, and the increase thereby. Harvesters, threshing outfits, wagons, implements, equipment of a livery stable. Abstract systems, books, maps, papers, and slips of searchers of records. Raisins and dried fruits, also all boxes, fruit graders, trays, ladders and other utensils. Bees, beehives, apiaries, frames, combs, extractors and all honey at the apiaries. Machinery and all apparatus used in producing and refining petroleum, asphaltum,

oils and greases. Machinery used in the production and manufacture of lumber, with all tools and appliances.

The list of things which can be mortgaged now includes all kinds of personal property except that which is not capable of manual delivery, articles of wearing apparel and personal adornment, and the stock in trade of a merchant, including a crop to be raised before it is planted, to secure future advances as well as existing indebtedness and its lien continues after severance as long as it remains on the land of the mortgagor.

Under the amended statute of 1917 all mortgages of the fixtures of a merchant must be recorded in the office of the county clerk of the county where the goods are situated at least seven days before the mortgage takes effect. (See Bulk Law.)

A mortgage of personal property, if to be recorded, must be acknowledged and recorded in the county where the mortgagor resides, if he resides in the state; also in the county where the property is situated, if in a different county from where the mortgagor resides. If the property is removed to another county at any time during the continuance of the mortgage, a copy of the mortgage must also be filed in the county to which it is removed, within thirty days after the removal.

Every person who, after mortgaging any personal property, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, with intent to defraud the mortgagee, takes, drives, or otherwise removes it, from the county where it was situate when mortgaged, without the written consent of the mortgagee, or who sells, transfers, or encumbers any part of it, is guilty of larceny, and is punishable accordingly; unless at the time of making such sale, transfer, or encumbrance, such mortgagor informs the person to whom such sale, transfer, or encumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made.

When a sale is made of mortgaged personal property upon a writ of execution, the purchaser acquires an absolute title to it. There is no right of redemption.

Charter Party: See Ships; Wrecks; Marine Insurance.

Checks: See Negotiable Instruments, §3265, and following; Accord and Satisfaction; Forgery.

Every person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud, makes or draws or utters or delivers to another person any check or draft on a bank, banker or depositary for the payment of money, knowing at the time of such making, drawing, uttering, or delivery, that he or his principal, or the corporation of which he is an officer, has not sufficient funds in, or credit with such bank, banker or depositary, to meet such check or draft in full upon its presentation, is punishable by imprisonment in the county jail for not more than one year or in the state prison for not more than fourteen years. The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank or depositary for the payment of such check or draft. (See Bank; Forgery; Accord and Satisfaction.)

When a person gives a check in payment, and you receipt his bill, nevertheless, the bill is not paid unless the check is paid. If he should stop payment on the check, he would still have to pay you in some other manner. If a check is endorsed by payee, and then lost by him or stolen from him, and paid by the bank, the loss falls on him. If a check is cashed by an innocent party without notice, and payment is stopped on it, the one who cashed it is entitled to have it paid by the maker, no matter what was the reason why payment was stopped—even though it was because of some fraud which the payee had practised upon the maker, and the maker did not discover until after the check was delivered. This is a matter entirely between the payee and maker, and the innocent party should not suffer when he cashed the check in good faith.

But if the signature on a check is forged, or if an indorsement on it is forged, and the bank cashes the check upon its belief that the signatures are good—the bank must stand the loss.

Checks should always be signed the same way—the way in which the name appears on the bank book; and the endorsement should always be the same as upon the face of the check, even though it is not correct. If incorrect, endorse it as it is, and then sign the correct name below it.

If a check is given you in payment, and you do not wish to ac-

cept it, because the amount is smaller than you claim—you must return the entire check, and cannot apply it on account, and write the maker that you will expect him to pay the balance.

Children: See Guardian and Ward; Crimes; Divorce; Succession;

A minor is a male under twenty-one and a female under eighteen. Calculated from the first minute of the day on which the person is born to the same minute of the corresponding day completing the period of majority. A person attains majority the first moment of the day preceding 21st anniversary of natal day; in Criminal Law, the age of responsibility is 13; A living foetus is a person, and may inherit.

“Youth is ever the time of heedlessness, of impulsiveness, and of forgetfulness,” but the law imposes upon minors the duty of giving such attention to their surroundings and such care to avoid danger, as may be reasonably expected from persons of their age and capacity. Whether a minor behaves with the care and prudence due from one of his years and experience is a question for the jury to decide. It cannot be said, as a matter of law, at what age a boy would be possessed of such intelligence, foresight and judgment as to blame him for being negligent in a case where he was injured. The care which a child is required to exercise in such matters is to be determined from the circumstances of each case.

A minor is civilly liable for a wrong committed by him, but not in exemplary damages, unless at the time he knew it was wrongful. He may enforce his rights by legal action, except that a guardian must be appointed for him.

He may make and draw deposits, and draw dividends and give valid receipts for them.

Minors cannot delegate a power, nor (under the age of 18), make a contract relating to real estate, or relating to any personal property not in his control.

The contract of a minor may be disaffirmed (except for his necessities or those of his family, entered into when not under the care of a guardian or parent able to provide for him or them). The minor himself may disaffirm, if contracts are made while he is under the age of 18, before his majority or a reasonable time afterward, or, if he die within that period, his heirs or personal representative may; but if the contract be made while over the age of 18 and under

21, he may then disaffirm in like manner by restoring the consideration or paying its equivalent.

When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this State, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require.

A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

The obligation for a father to support his child—legitimate or illegitimate—is a continuing one, against which the statute of limitations will not run as long as the child needs such support. Neither the father nor the mother may bargain away the child's right of support.

WHO MAY INDENTURE: A minor of fourteen years of age or over may be bound by his father, or by his mother or guardian in case of the father's death or incompetency, or where the father has wilfully abandoned his family, for one year without making suitable provision for their support, or is habitually intemperate or is a vagrant; by an executor who by the will of the father is directed to bring up the child to a trade or calling; by the mother alone if the child is illegitimate; or by the Judge of the Superior Court if the minor is poor, homeless, chargeable to the County or State, or an outcast who has no visible means of obtaining an honest livelihood. If a minor has no parent or guardian competent to act he may, with the approval of the Superior Court, bind himself. The minor's consent must be expressed in the indenture and testified to by his signing the same.

TERM: A male may be bound until twenty-one and a female until eighteen years of age.

DUTY OF MASTER: The master must in the case of an orphan or homeless minor cause the apprentice to be taught reading, writing, and the ground rules of arithmetic, including ratio and proportion, must give him the requisite instruction in the different branches of his trade, and, at the expiration of his term of service, must give him \$50 in gold and two new suits of clothes to be worth in the aggregate at least \$60. In all cases the master must pay and deliver to

the apprentice the money, clothes, and other property to which he is entitled under the indenture.

INTERFERENCE: It is unlawful to aid, entice, counsel or persuade an apprentice to run away, or to employ, harbor, or conceal him, knowing him to be a runaway.

BIRTH: Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate, or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled to it, may be imprisoned for 10 years.

Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian substitutes another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding ten years.

PARENT AND CHILD: All children born in wedlock are presumed to be legitimate.

All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. The presumption of legitimacy can be disputed only by the (1) husband or (2) wife, or the (3) descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

The father, as well as the mother, of an illegitimate child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be maintained in behalf of a minor illegitimate child, by his mother or guardian, and in such action the Court shall have power to order and enforce performance in a suit for divorce by a wife.

The father and mother of a legitimate unmarried minor child are equally entitled to its custody, services and earnings. If either

the father or mother be dead or unable or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody, services and earnings.

The husband and father, as such, has no right superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the Court may, (1) during the pendency of such action, or (2) at the final hearing thereof, or (3) afterward, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may (4) at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings. The proper Court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit. The parent, as such, has no control over the property of the child.

The abuse of parental authority is the subject of judicial cognizance in a civil action brought (1) by the child, or (2) by its relative within the third degree, or (3) by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

The authority of a parent ceases: ((1) Upon the appointment, by a Court, of a guardian of the person of a child; (2) Upon the marriage of the child; or, (3) Upon its attaining majority.

If a parent chargeable with the support of a child dies, (1) leaving it chargeable to the County, and (2) leaving an estate sufficient for its support, the supervisors of the County may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

It is the duty of the (1) father, the (2) mother, and the (3) children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent, is binding.

If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value of them from the parent.

A parent is not bound to compensate (1) the other parent, or (2) a relative, for the voluntary support of his child, without an agreement for compensation, nor (3) to compensate a stranger for the support of a child who has abandoned the parent without just cause.

A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement.

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

The wages of a minor employed in service may be paid to him until the parent or guardian entitled to them gives the employer notice that he claims such wages.

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper Court to restrain a removal which would prejudice the rights or welfare of the child.

ADOPTION: Any minor child may be adopted by any adult person. The person adopting the child must be at least ten years older than the person adopted. A married man, not lawfully separated from his wife, can not adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent; provided, the husband or wife, not consenting, is capable of giving such consent. A legitimate child can not be

adopted without the consent of its parents if living, nor an illegitimate child without the consent of its mother if living.

The consent of a child, if over the age of twelve years, is necessary to its adoption.

A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibility for, the child so adopted, and have no right over it.

The father of an illegitimate child, by (1) publicly acknowledging it as his own, (2) receiving it as such, (3) with the consent of his wife, if he is married, (4) into his family, and (5) otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions do not apply to such an adoption.

Adopted children cannot inherit from former grandparents or parents, unless property is willed to them; but do inherit from persons adopting them.

Child Labor Law: Digest prepared by Juvenile Protective Association:

No minor under the age of 16 shall work unless permitted by the Compulsory Education law.

No minor under 18 shall work more than 8 hours daily, nor before 5 a. m., or after 10 p. m.

In towns of more than 15,000 boys under 16 years can be in messenger service only in the day time.

In cities of over 23,000, no boy under 10 years shall work nor girls under 10, shall work.

Minors are not permitted to work in occupations dangerous to life, limb, health and morals.

No minor shall work in 18 specified occupations.

Child actors may perform at any age and after 10 p. m. with the written consent of the Bureau of Labor Statistics.

In agricultural and domestic pursuits, minors may work outside of school hours or in vacation.

Citizens: The people, as a political body, consist of citizens who are electors, and citizens who are not electors.

Every person while within this state is subject to its jurisdiction and entitled to its protection.

Citizens are all persons born in this state and residing within it, except the children of transient aliens and of alien ministers and consuls: and all persons born out of this state who are citizens of the United States, but who reside within this state.

A citizen of the United States who is not a citizen of this state, has the same rights and duties as a citizen of this state who is not an elector.

Every native citizen of the United States, every person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct thirty days, and who has conformed to the law governing the registration of voters—shall be a qualified elector at any and all elections held within the county, city and county, city, town or district within which such elector resides.

An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding office, and election to office.

The sovereignty of the state resides in the people of it, and writs and processes must issue in their name.

The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law: (1) To punish for crime; (2) To imprison or confine for the protection of the public peace or health, or of individual life or safety; (3) To imprison or confine for the purpose of enforcing civil remedies; (4) To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind; (5) To establish custody and restraint of paupers for the purpose of their maintenance; (6) To establish custody and restraint of their education, reformation and maintenance; (7) To require services of persons, with or without compensation: In military duty: in jury duty; as witnesses; as town or village officers; in

highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck and flood; and in such other cases as are provided by statute.

Foreigners of the white race, or of African descent, eligible to become citizens of the United States, while bona fide residents of this state, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission and inheritance of all property, other than real estate, as native born citizens.

Persons in this state not its citizens are either citizens of other states or aliens.

Citizens shall be secure in their persons, homes, papers and effects, against unreasonable seizure and searches.

The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this state.

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of the press or of speech. (See Defamation; Syndicalism.)

The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating houses, barber shops, bath houses, theaters, skating rinks, public conveyances, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens.

Whoever denies to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges enumerated, or who aids, or incites, such denial, or whoever makes any discrimination, distinction or restriction on account of color or race, or except for good cause, applicable alike to citizens of every color or race whatsoever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating house, barber shop, bath house,

theater, skating rink, public conveyance, or other public place of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction or restriction, for each and every such offense is liable in damages in an amount not less than one hundred dollars, which may be recovered in an action at law brought for that purpose.

In addition to these rights, every person has, subject to the qualifications and restrictions provided by law, the right: (1) of protection from bodily restraint; (2) from personal insult; (3) from defamation; and, (4) from injury to his personal relations.

The rights of personal relations forbid: (1) the abduction of a husband from his wife, or of a parent from his child; (2) the abduction or incitement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody; (3) the seduction of a wife, daughter, orphan sister or servant; (4) any injury to a servant which affects his ability to serve his master.

Claim and Delivery: If one withholds the property of another, and refuses to return them, the owner has two remedies. He can bring an action in Claim and Delivery (which is like the old common law action of Replevin), or, he may sue for the value of the goods in Conversion; or he may sue both ways if he finds that the defendant has disposed of the goods, or lost or destroyed them in the meantime.

The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him.

Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing (1) That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession of it; (2) That the property is wrongfully detained by the defendant; (3) The alleged cause of the detention of it, according to his best knowledge, information and belief; (4) That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; (5) The actual value of the property.

The Sheriff (or the Constable—according to the claimed value of the property), then takes possession of the property, and holds it

until the conclusion of the case; unless the defendant does one of two things. He may either claim that the sureties are not financially responsible, or he may in turn give a bond to the Sheriff in double the claimed value of the property. He cannot do both. If he gives bond, the Sheriff will return the goods to him, but if he loses the case, his sureties agree to return these goods, or pay the plaintiff the value of them. If he claims that the plaintiff's sureties are not sufficient, they must prove that they are, by appearing before the Judge or Justice who issued out the original writ, and testifying under oath as to the property which they own. If they do not show that they are responsible persons, the property must be returned to the defendant by the Sheriff. If they do so qualify, the Sheriff will keep the property until the case is settled.

If one can obtain possession of the property peaceably, a claim and delivery suit will not be necessary. But peaceably does not mean by breaking into a house or obtaining entrance by trickery. And the person who endeavors to secure goods in this way must be careful that he does not commit an assault, or battery, or make a false imprisonment by (perhaps) shutting in a room the one found in possession of the property. Having once filed such a suit, it must be finished, as the sureties agree that the action will be prosecuted. It cannot be brought and then dismissed, after one has taken possession of the property, as then the defendant may file a suit against the sureties for breach of their bond.

The ordinary measure of damages for the wrongful detention of property is interest. But where property (such as an automobile, a milch cow, furniture, a buggy, a threshing machine) has a usable value which exceeds the lawful rate of interest, the successful party may recover the value of such use during the time he was deprived of it—as damages for its detention. This value is to be estimated by the ordinary market price of the use of such property.

Cloud on Title: See Real Estate.

Codicil: See Wills.

Collateral Security: See Negotiable Instruments, ¶3086.

Commission Merchants. It is made the duty of every commission merchant, broker, factor, or consignee, to whom any property is consigned or entrusted for sale, to make, when accounting for it or subsequently, upon the written demand of his principal or consignor, a true written statement setting forth the name and address of the

person or persons to whom a sale of the said property, or any portion of it, was made, the quantity so sold to each purchaser, and the respective prices obtained for it; provided, however, that unless separate written demand shall be made as to each consignment or shipment regarding which said statement is desired, before sale, it shall be sufficient to set forth in said statement only so many of said matters above enumerated as the commission merchant, broker, factor, or consignee may be able to obtain from the books of account kept by him; and that such statement shall not be required in case of cash sales where the amount of the transaction is less than fifty dollars. Any person violating these provisions is guilty of a misdemeanor.

Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor, or consignee, a false statement as to the price obtained for any property consigned or entrusted for sale, or as to the quality or quantity of any property so consigned or entrusted, or as to any expenditure made in connection with it, shall be deemed guilty of a misdemeanor, and on conviction of it, shall be punished by fine not exceeding five hundred dollars and not less than two hundred dollars, or by imprisonment in the county jail not exceeding six months and not less than ten days, or by both such fine and imprisonment.

Common Carrier: See Carrier.

Common Law: See Law; Actions.

Complaint: See Action.

Commercial Feeding Stuff: (1919 statute).

Section 1. The term "commercial feeding stuffs" shall be held to include all feeding stuffs used for feeding live stock and poultry, except the following: (a) Whole seeds or grains. (b) The unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kaffir, milo and light rice; provided, that light rice shall be labeled "light rice" when ground. (c) Whole hays, straws, cottonseed hulls and corn stover, when unmixed with other materials. (d) All other materials containing sixty per centum or more of water.

Sec. 2. The standards for commercial feeding stuffs shall be the latest revision of the definitions of feeding stuffs adopted by the association of feed control officials of the United States.

Sec. 3. Every lot or parcel of commercial feeding stuffs sold, offered or exposed for sale or distributed within this State shall have affixed thereto a tag or label, in a conspicuous place on the outside of it, containing a legible and plainly printed statement in the English language, clearly and truly certifying (a) The net weight of the contents of the package, lot or parcel; (b) The name and principal address of the manufacturer or person responsible for placing the commodity on the market; (d) The minimum per centum of crude protein; (e) The minimum per centum of crude fat; (f) The maximum per centum of crude fiber; (g) The maximum per centum of ash; (h) The specific name of each ingredient used in its manufacture. (i) The per centum of such ingredients as corn cobs, corn bran, oat hulls, barley hulls, rice hulls, ground light rice, alfalfa meal or similar materials, when such constitute a portion of the package, lot or parcel. (j) In the case of poultry feeds, the per centum of grit or mineral matter they contain.

The crude protein, crude fat, crude fiber and ash shall be determined by the methods in force at the time by the association of official agricultural chemists of North America.

Sec. 4. The State Board of Health and its agents and inspectors shall have free access to all places of business, mills, buildings, carriages, cars, vessels and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeding stuffs, and upon tender and full payment of the selling price of the said sample, to take therefrom samples for analysis. The methods of analysis shall be those in force at the time by the association of official agricultural chemists of North America.

Sec. 5. Commercial feeding stuffs shall be deemed adulterated if they do not conform to the analysis declared on the label or tag.

Sec. 6. Commercial feeding stuffs shall be deemed mislabeled if they are not labeled or tagged in accordance with the provisions of section three.

Community Property: See Husband and Wife; Landlord and Tenant; Wills; Succession.

Composition with Creditors: See Bankruptcy.

Compromise, Offer of, Before Trial: See Tender; Deposit in Court; Action.

If the defendant, at any time before the trial, offers, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he does not accept such offer before the trial, and fails to recover in the action a sum in excess of the offer, he cannot recover costs incurred after the offer, but costs must be adjudged against him, and, if he recovers, be deducted from his recovery. The offer and failure to accept it cannot be given in evidence nor affect the recovery, otherwise than as to costs.

Concealment: See Insurance.

Conditional Sales: See Real Estate.

Condition Precedent: See Real Estate.

Conditions Subsequent: See Real Estate.

Consideration: See Contracts, ¶8.

Consignee: See Carriers; Bill of Lading.

Consignments: Is intended to be a loan for sale of personal property. See Loans, Pledge, Deposit, Storage, Bailments. No title is intended to be passed until the articles have been sold by the consignee, and yet if the party to whom the goods are consigned, should in his turn pledge these goods, and leave the state with the money—the consignor would be compelled to pay the amount of the pledge to the pledgee, upon the legal proposition that having clothed a person with apparent authority and dominion over goods, he cannot complain with what is done with them.

One does not pass title to consigned goods by sending a statement each month showing the amount of goods thus consigned then in possession of consignee, and showing also the amount of former goods thus sent him, and payments made for them. See Installment Sales. It is better business to use a special form of bill heads, or memorandum statement, containing a clause, "These goods are on consignment or memorandum, and not sold. The title to them shall not pass until paid for by the consignee." It would be better still to cause the consignee to sign a special contract, in which he would agree precisely under what conditions the goods were sent and received, how long they were to remain in his possession, how and where and at what price they were to be paid for, at whose expense they would be shipped, insured and returned.

Consignor: See Carriers; Bill of Lading.

Contracts: See Bottomry; Respondentia Contracts; Independent Contractor; Monopolies; Statute of Frauds; Liquidated Damages; Good Will; Sales; Partnership; Limitations; Alteration (1) Definition; (2) Parties to the Contract; (3) Consent; (4) Offer; (5) Acceptance; (6) Revocation; (7) Object; (8) Consideration; (9) Void Contracts; (10) Executory and Executed; (11) Express and Implied; (12) Delivery; (13) Seals; (14) Interpretation; (15) Termination; (16) Alteration; (17) Destruction or Cancellation.

A contract is an agreement to do or not to do a certain thing.

In order that a contract should exist, there should be (a) parties to it who are capable of contracting—see ¶2; (b) the consent of these parties—see ¶3; (c) a lawful object—see ¶7; and (d) a sufficient cause, or consideration—see ¶8.

All persons are capable of contracting—except minors, persons of unsound mind, and persons deprived of civil rights.

There can be no fictitious persons to a contract; the parties should not only exist—as living persons, or persons who have an existence because of law (such as corporations, partnerships, etc.), but the persons must also be possible of identification.

A contract, which has been made expressly for the benefit of a third person, may be enforced by him at any time before the parties to it rescind it. See Rescission.

Consent of parties to a contract must be (a) free, and (b) mutual, and (c) communicated by each to the other.

If the consent is not free, it is not absolutely void, but may be rescinded by the parties. See Rescission.

If consent is obtained through Duress, Menace, Fraud, Undue Influence, or Mistake, it is not free nor real, even though it may seem to be. See Duress; Fraud; Undue Influence; Mistake.

Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases, they are presumed to do so.

Consent can be communicated with effect, only by some act or omission of the contracting party—by which he intends to communicate it, or which necessarily tends to such communication.

If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless the conditions are conformed to; but in other cases, any reasonable and

usual mode may be adopted. (That is, if the proposer writes that the acceptance must be in writing, or by telegraph, or by letter, or by a certain day, he cannot be held by his proposition, unless the acceptance is sent precisely as he says it shall be.)

Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposition has put his proposal in the course of transmission to the proposer, provided, of course, that he conforms to the terms of the proposal. (For example, an acceptance sent by mail takes effect as of the time it was mailed, and not as of the time it was received.)

An acceptance of a proposal, or of the consideration offered in a proposal, may be given by performance of its conditions.

(For instance, if a reward is offered, any one performing the act for which the reward is to be given, may claim it.)

An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest and which will conclude the party accepting. A qualified acceptance is a new proposal. (That is, if you offer to sell a horse to a man for \$100, and he says that he will give you \$90, and a buggy (even though the buggy is worth more than ten dollars), this will not be an acceptance of his, but would be a new proposition from him to you, which you could accept or reject.

A proposal to accept, or acceptance of, an offer, on terms varying from those proposed, is a rejection of the offer and puts an end to it.

One who submits a counter proposition instead of accepting an offer cannot abandon the substitute and accept the original offer without the other party's consent.

If a person voluntarily accepts the benefits of a transaction, this is just the same as if he had consented to all the obligations which arose from such transaction—that is, as far as the facts are known, or as far as they ought to be known—to the party thus accepting.

Where services are rendered by one person, and another derives a benefit from such services—and when there is no agreement to pay for the services—yet the law will presume that the person who enjoyed the benefit of the services is bound to pay what they are reasonably worth. (See Limitations; Statute of Frauds.)

Where there is a contract (either express or implied) for an indefinite time, with no time for payment specified—the statute of limitations does not begin to run until the services end. (See Statute Frauds.)

Revocation: A proposal may be revoked at any time before its acceptance is communicated to the proposer, but cannot afterward.

A proposal is revoked in one of the following four ways: (a) By the communication of notice of revocation by the proposer to the other party, as described, before his acceptance has been communicated to the proposer; (b) by the lapse of time prescribed in such proposal for its acceptance; or, if no time is prescribed, then a reasonable time without communication of the acceptance. See Reasonable. (c) By the failure of the acceptor to fulfill a condition precedent to acceptance. See Conditions Precedent. (4) By the death or insanity of the proposer.

A contract which is voidable solely because due consent has not been given, may be ratified by later consent. See Ratification.

OBJECT: The object of a contract is the thing which is agreed upon to be done, or not to be done, upon the part of the party receiving the consideration.

The object of a contract must be lawful where the contract is made, and it must be possible and ascertainable by the time such contract is to be performed.

Unless a contract is impossible in the nature of things, everything is deemed to be possible.

Contract to pay upon the happening of some future event—which is in the control of the promisee

Consideration: See Real Estate; Negotiable Instruments, §§3105, 3106, 3108, 3136.

Consideration: The following are known as “good considerations,” when either (a) or (b) is an inducement to the promisor; (a) any benefit conferred—or agreed to be conferred—upon the promisor, by any other person, to which benefit the promisor is not lawfully entitled (b) any prejudice suffered (or agreed to be suffered) by such promisor—except such as he is lawfully bound to suffer at the time of consent; also (c) an existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee,

to an extent corresponding with the extent of the obligation, but no further or otherwise.

A written instrument is presumptive evidence of a consideration.

The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount of it to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

The true consideration for any written instrument can always be shown; (as, where a receipt or deed reads "for ten dollars," when two hundred dollars was paid, the Court will permit testimony as to the true amount). See Accord and Satisfaction; Release.

The consideration of a contract must be lawful.

That is not lawful which is: (1) Contrary to an express provision of law; (2) Contrary to the policy of express law, though not expressly prohibited; or, (3) Otherwise contrary to good morals.

The law will not aid either party to an illegal contract. It leaves the parties where it finds them. Neither a court of law, nor a court of equity, will aid the one in enforcing it, or give damages for breach of it, or set it aside at the suit of the other; or lend its aid to recover money back—if the agreement has been carried out in whole or in part by the payment of money, or the transfer of other property.

The separation of the good consideration from that which is illegal will not be made where the party seeking to enforce the contract is himself the one who made and breached the illegal consideration.

If there are several considerations for one promise, some of which are legal and others illegal, the promise is wholly void, as it is impossible to say which one of the considerations induced the promise.

Where a contract has several distinct objects, of which one at least is lawful, and one of the objects is unlawful—in whole or in part—the contract is void as to the unlawful portion and valid as to the rest.

Where a contract has but a single object, and such object is (1) unlawful (whether in whole or in part), or (2) wholly impossible

of performance, or (3) so vaguely expressed as to be wholly unascertainable—the entire contract is void.

If any part of a single consideration for one or more objects, or several considerations for a single object, is unlawful, the entire contract is void.

Where a contract provides an exclusive method which by its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provisions only are void.

All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

The following kinds of contracts are void: A note given for a gambling debt; making a settlement because of threat of arrest; an agreement to file on a homestead for a partnership; or to let houses for prostitution.

Every contract by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except under certain conditions. (See Liquidated Damages.)

Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, except as is provided, is to that extent void.

Every contract in restraint of the marriage of any person, other than a minor, is void.

Any consideration may be executed or executory, in whole or in part. An executed contract is one the object of which is fully performed. All others are executory.

When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

KINDS OF CONTRACTS: A contract is either express or implied.

An express contract is one the terms of which are stated in

words. An implied contract is one the existence and terms of which are manifested by contract.

All contracts may be oral, except such as are specially required by statute to be in writing. See Statute of Frauds.

Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party to it, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

DELIVERY: A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

The provision of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to written contracts. (See Real Estate.)

A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which instrument is written, but all distinctions between sealed and unsealed instruments are abolished.

INTERPRETATION: The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulation concerning its matter which preceded or accompanied the execution of the instrument.

All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided.

A contract must be also interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this chapter.

When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Several contracts relating to the same matters, between the same

parties, and made as parts of substantially one transaction, are to be taken together.

A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Technical words are to be interpreted as usually understood by persons in profession or business to which they relate, unless clearly used in a different sense.

A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, then according to the law and usage of the place where it is made.

A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intend to contract.

If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Particular clauses of a contract are subordinate to its general intent.

Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from the form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses,

subordinate to the general intent and purpose of the whole contract.

Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer (or body, as such), and a private party, in which case it is presumed that all uncertainty was caused by the private party.

Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied from it, unless some of them are expressly mentioned in it; in such case, all other things of the same class are deemed to be excluded.

If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained. (See Reasonable.)

When all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this article.

A contract is extinguished by its rescission. See Rescission.

A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. An executed contract is one the terms of which have been fully performed.

The destruction or cancellation of a written contract, or of the

signature of the parties liable thereon, with intent to extinguish the obligation of it, extinguishes it as to all the parties consenting to the act. The intentional destruction, cancellation or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section. If one party to a contract has destroyed the subject matter, or disables himself so as to make performance impossible—his conduct is the same as if he broke the contract, although the time for performance has not then arrived.

Contributory Negligence: See Accident; Last Clear Chance; Negligence. If Mr. A. sues Mr. B., claiming that it was through the negligence of Mr. B. that some injury was done to Mr. A.—when in reality, the injury was caused by Mr. A.'s own carelessness—this is contributory negligence on the part of Mr. A.—and he will have judgment rendered against him.

Conversion: See Claim and Delivery; Accession; Bill of Lading, 2130C.; Warehouse Receipts, 13; Damages.

Consists in the exercise of acts of domain over the movables (personal property) of another; it differs from Trespass in that it concerns ownership, while trespass is the unlawful taking or interruption of possession, irrespective of ownership. Conversion is in two forms: (1) when the wrongdoer appropriates to himself the goods of another, and (2) when he does not so appropriate the goods, but nevertheless deprives the owner of them of their use—by an act of ownership. (See Larceny, Embezzlement, Claim and Delivery). But the simple act of meddling with another's property, where there is no intent to claim title to it—is not sufficient. (See Automobiles.) The refusal to deliver personal property on demand, to the owner, is conversion, although demand is not always necessary to show the intent of the one holding the possession. A refusal to transfer shares of stock in a corporation would be conversion, as would also the refusal of an officer to redeliver property wrongfully held. The amount of damages is the market value of the property, with legal interest from the time. If the conversion was wrongful, then exemplary damages may also be collected, but no attorney's fees.

Conveyance: See Real Estate.

Corporations: See Liens; Negotiable Instruments, ¶3103; Conversion. A corporation may be formed by three or more living persons, a majority of whom must be residents of this State, and all of whom must sign the articles of incorporation before a notary or other similar official. These articles of incorporation recite (first) the name of the corporation; (second) the place where it is intended to carry on its principal business; (third) the term for which it is intended to carry on such business (which shall not be longer than fifty years, in any case); (fourth) the number of its directors (which shall not be in any case less than three; (fifth) the names and residences of those who are appointed as such directors to serve for the first year; (sixth) the amount of its authorized capital stock, and the number of shares; (seventh) the names of the persons who have subscribed to the stock, and the amount which each has subscribed; (eighth) the purposes for which the corporation is formed. This last is the most important, and should be carefully drawn by an attorney of experience, because a corporation is limited in its future business transactions to what its charter (which is its articles of incorporation certified to by the Secretary of State) permits it to do, and it may get into serious legal entanglements if it carries on a business which was not authorized. When these articles have been written to the satisfaction of the attorney for the proposed corporation, or its incorporators, the original copy is filed with the county clerk of the county where the principal place of business is to be carried on, and a copy of it (certified to by this county clerk) is forwarded to the Secretary of State at Sacramento, together with the necessary fees (which vary from \$10.00 up, according to the amount of the capital stock) and with the amount of taxes for the first year. If the name chosen by the incorporators does not conflict with a name being used by any other corporation in this State, and if the purposes are properly drawn, and if the proper amount of money has been sent, the Secretary of State will thereupon issue a charter, the original of which should be filed in the office of the county clerk where the original articles are filed. The corporation is then ready to carry on its business. Frequently a corporation is organized for the purpose of taking over, or buying out some business which has been conducted by one person, or a partnership. (For the method of transfer of such business, see

Sales and Bulk Law.) Within thirty days from the time the charter is issued, the incorporators must meet and adopt a set of by-laws which govern the conduct of the business in the future. At this meeting, or some later meeting, the officers of the corporation will also be elected, consisting of a President, Vice President, Secretary and Treasurer. The President, Vice President and Treasurer must also be directors and stockholders; the Secretary may be either or both, but need not be either, and may be either appointed or elected. These by-laws will also provide the duties of these various officers, and their limitations. At some meeting of this Board of Directors a resolution will be passed as to taking over the former business for a certain number of shares of the capital stock of the corporation, or for the sale of the stock in some manner, or for issue of stock for a patent right or real estate, or a lease, an option, or such other property as the Board of Directors may determine to be for the best interests of the business of the corporation. But no shares can be issued by any corporation (either domestic or foreign) unless such corporation has received a permit from the Commissioner of Corporations of this State. See Blue Sky Law.

STOCKHOLDERS' LIABILITY: California has more protection for the creditors of a corporation than any other State in the Union. Creditors may look for payment to the corporation, to its assets and to the stockholders, also, who are responsible at the following times and manner. First, for the difference between the par value of the stock and the amount paid for it, that is, if he paid ten cents a share for the stock the par value of which is one dollar, he would have to pay the other ninety cents; Second, for such proportion of the debts of the corporation, as his stock bears to the total issued and outstanding shares; that is, if he owns one thousand shares out of a total issue of twenty thousand, he must pay one-twentieth of the debts of the corporation, if they were incurred during the time he owned the stock. But a recent law has provided that corporations may be formed with the liability of the stockholder limited to the amount of stock which he owns, and not in the proportion described. Third: Corporation directors have the right to levy assessments to obtain money for debts due, and for money to carry on or extend business. No such levy must be of more than ten cents a share, and none must be levied if a former is still unpaid. If the stockholder

does not pay the assessment when called for, the corporation has the right to sell his shares at public auction to the highest bidder, for cash, or to bid them in itself; or it may sue him for the amount of the assessment and not sell his shares. If the corporation buys in the shares, it has the right to sell them again to any other person for any sum decided by the Board of Directors. But corporations can be organized with their stock issue nonassessable.

There are special laws for the following classes of corporations: Agricultural fair, banking, bridge, board of trade, benevolent, cemetery, colleges, co-operative business, chamber of commerce, chute, ferry, homestead, insurance (including accident assessment, annuity, endowment, fraternal, fire, life, livestock, marine, mutual benefit, mortgage, title); land and building, mechanics institutes, loan, mining, fire, prevention of cruelty to children and animals, railway, religious, social, savings and loan, seminaries of learning, street railway, telegraph and telephone, water and canal, wharf, wagon road.

A corporation may change its name, or its principal place of business, or its purposes, or the preference of its stock issue, or its term of existence (but not over fifty years altogether); increase or decrease the number of members on its Board of Directors (but never less than three); increase or decrease the amount of its capital stock (but never to less than its indebtedness); or create a bonded indebtedness (which must be less than its capital stock); amend its bylaws or articles of incorporation, dissolve after all its debts are paid (and then may distribute its assets to its stockholders); acquire real property, but only enough necessary to carry on its business. A corporation must file certified copies of its articles of incorporation in every county in this State where it does business or holds property; adopt by-laws within thirty days after its charter is signed; elect directors annually; furnish financial statement to each stockholder at least one week before the annual meeting.

DIRECTORS must organize and elect officers immediately after their election; hold their meetings at the office or principal place of business of the corporation; a majority must be residents of the State, and all must be stockholders; Directors must not pay dividends except from surplus profits; make entries, reports, public notice—which are false in any material representation.

A STOCKHOLDER has the right to vote at the annual meeting

(or special meeting of stockholders); either in person or by proxy; to inspect the books, and papers of the corporation at any reasonable time, provided he has no motive to injure the corporation in so doing; to inspect the mine (if it is a mining corporation). In voting, he may cumulate his vote; that is, if there are five directors to be elected, and he owns 1000 shares, he may vote five thousand shares for any one director, and none for any others.

FOREIGN CORPORATIONS may not maintain an office or do business in this state upon any more favorable terms than may a domestic corporation. A foreign corporation must pay the same filing fees and annual tax as does a domestic, and in addition must also pay a fee of \$75 for the privilege of filing a certified copy of its articles of incorporation. It is amenable to the Blue Sky Law, to the stockholders' liability, mining and assessment laws.

Costs: See Action; Deposit in Court. The winning party in a law suit is entitled to judgment for the court costs which he has expenses, or made himself liable for (See Tender; Deposit in Court), or unless—in the Superior Court—the amount of the judgment is less than \$300, except when in cases appealed from the Justices' Court.

The person who begins the action must pay the court costs in advance; in the Justices' Court—two dollars when the complaint is filed, and three dollars for hearing on demurrer, or for trial fee, if no demurrer is filed—but if demurrer fee is paid, this also serves as trial fee. There is also the charge for service of summons, being fifty cents and mileage for each person served; service of subpoena, the same charge; and constable fees, if an attachment is levied.

In the Superior Court the filing fee is six dollars; two dollars for hearing on demurrer, or any motion, or setting for trial. There are no further charges, unless jury is requested—except service of process and Sheriff's charges. If Jury is requested, the party desiring it must deposit with the Clerk of the Court at the time of such request, the sum of two dollars per day for each juror, and the reporter's fee of five dollars. At the trial of the case, if a shorthand reporter is desired, his charge is ten dollars per day, one-half to be paid by each side. A reporter is seldom asked for in the Justices' Court, unless it is expected that the case will be appealed, and that evidence taken will be needed in the Superior Court trial.

If the case is decided in favor of the plaintiff, these costs are

added to the amount of the judgment, and the defendant then has to pay them. If the case is decided in favor of the defendant, he is entitled to such costs as he may have obligated himself to pay, such as charges for service of papers, witness fees and mileage.

If a person will make an affidavit that he is an absolute pauper, and has no money, nor any means of gaining any, he is entitled to have all the processes of the court issued at no charge, even to jury fee.

Courts: California laws have provided for six different courts: The Recorder's Court, the Polico Court, the Justice's Court, the Superior Court, the Appellate Court and the Supreme Court. In addition to these, the United States Circuit Court holds sessions in various cities of this state.

The procedure in each of these courts differs, and no attempt will be made in this book to discuss the procedure in detail—only such as will be enough to show the differences and make the proceedings clear. The many details of technicalities should be left to the knowledge of your lawyer.

The RECORDER is appointed by a Mayor or the Board of Trustees and has the same powers as a Police Justice and (civilly) as a Justice of the Peace, provided the matters sued upon occurred within the boundaries of his city.

The POLICE JUSTICE is an elective office. This court tries cases for violation of any city ordinance, and actions for collection of city licenses.

The JUSTICES' or TOWNSHIP COURTS try cases on bonds and undertakings; enter judgment by confession; foreclose chattel mortgages; on contract; on claim and delivery; for injury to persons or property, and injury to real property—all when the amount claimed does not amount to \$300.00, exclusive of interest. Also try cases in unlawful detainer when the amount of rent is not over \$25, but the damages may be any amount. The Justice also tries cases for violation of a state law, when less than a felony, and conducts the preliminary examination of persons accused of felonies, deciding whether or not such persons are to be tried by a jury.

The SUPERIOR COURTS try the following cases: Insolvency; probate; divorce, or annulment; equity; nuisance; forcible entry; unlawful detainer, when the monthly rent is over \$25.00, and the

damages are over \$200.00; all actions involving title or possession of real property, or legality of tax, impost, assessment, toll or municipal fine; civil actions not capable of pecuniary estimation; all other actions in which the demand is \$300.00, or more, exclusive of interest; writs of mandamus, review, prohibition, quo warranto, habeas corpus. They act as the court of appeal from judgments of the Recorders', Police and Justices' Courts.

The DISTRICT COURTS (known as Appellate Courts) consider all cases sent to it by the Supreme Court, and may issue the same writs as the Supreme Court; they hear and decide cases on appeal from Superior Court in which the demand is \$300.00 to \$2000.00, and cases of insolvency or to abate nuisance, as well as forcible entry and detainer (except those arising in Justices' Courts). In case a decision of this court is not satisfactory to one side of a controversy, a motion for rehearing may be made, addressed to the Supreme Court. But this decision is final.

The SUPREME COURT consists of Six Justices, elective. It hears and decides matters on appeal from Superior Court and reviews decisions of Appellate Courts. It may issue writs of mandamus, prohibition, quo warranto, review and habeas corpus.

Covenants: See Real Estate, ¶6.

Credit: See Checks.

Any person who shall knowingly make or cause to be made (either directly or indirectly, or through any agency whatsoever), any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means of ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit of himself or of such person, firm or corporation; or

Whoever procures either of the benefits or things mentioned in the preceding paragraph (for the benefit of himself, or of such firm, person or corporation), knowing that such a false statement in writing has been made concerning the financial condition or means

or ability to pay, of himself, or of such person, firm or corporation; or

Whoever represents on a later day, that such statement formerly made (if then made on such day) would be then true—when in fact such statement would be then false—and procures upon the faith of it (for the benefit of himself or of such person, firm or corporation) either of the things of benefit described in the first paragraph, when he knows that a statement in writing has been made, concerning the financial condition or means or ability to pay of himself or such person, firm or corporation—

Shall be guilty of a misdemeanor.

Creditors: See Sales; Frauds; Assignment; Bankruptcy; Bulk Law; Actions; Transfers; Limitations; Attachment; Warranty; Guaranty.

Crops: See Water Law; (Mutual Company); Damages; Landlord and Tenant; Attachment; Real Estate.

Crops: The general rule is that products of the earth, which are annual, raised by yearly manurance and labor, owing to their annual existence to cultivation by man, are commonly called emblements, and are personal property. In California, these include garden vegetables and fruits of trees and vines. See Liens; Mortgages; Chattel Mortgage; Real Estate; Water. Where the tenancy is of uncertain duration, and is terminated while the crops are growing, through no fault of the tenant, he has the right to harvest and remove the crops (This case seems to be as near as the California courts have gone, but the law undoubtedly is that when a tenant has planted a crop, he will be permitted to harvest it and remove it—unless mortgaged).

Cross-Complaint: See Actions.

Damages: See Measure of Damages; Liquidated Damages.

Damages is the amount of money which is considered by the law to recompense a person for the loss or injury which he has suffered. The amount is called the "measure of damages."

The value to the buyer or owner of property, when deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest the place where the property ought to have been put into his possession—and at such time after the breach of duty upon which his right is founded,

as would suffice for him to make such a purchase, acting with reasonable diligence.

If a person is deprived of personal property which has a peculiar value, he may recover that value for its injury or for being deprived of it, from one who had notice of it, or from a wilful wrongdoer.

The value of an instrument in writing is presumed to be that of the property to which it entitles its owner—for the purpose of fixing the amount of damage.

The damages for conversion of personal property is (1) the value of the property at the time of the conversion, with the interest from that time; or—where the action has been prosecuted with reasonable diligence—then the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and (2) a fair compensation in time and money properly expended in pursuit of the property.

If a seller fails to deliver personal property which he has agreed to deliver, and if the price of it has not been fully paid in advance—the buyer is entitled to recover the value of the property to him, over and above the amount which would be due to the seller under the contract—if it had been carried out.

If a buyer fails to accept and pay for personal property, and the title is vested in him, the damage caused is the amount of the contract price.

If the title is not vested in the buyer, and he does not accept and pay for personal property which he has agreed to accept and pay for—then the property should be sold under the lien law (which see), and the damage is the difference between the amount thus received and the contract price; but if not sold under the lien law, then the damage is the difference between the amount due from the buyer, over and above the value to the seller—and plus the excess of expenses in carrying it to market, over the amount which would have been incurred for its carriage if the buyer had accepted it.

The value of property to a seller of it is deemed to be the price which he could have obtained for it in the market nearest to the place at which it should have been accepted by the buyer—and at such time after the breach of the contract as would have sufficed for the seller to effect a resale, acting with reasonable diligence.

No damages can be recovered for a breach of contract, if they are not clearly ascertainable both in their nature and origin.

Where a breach of duty has caused no noticeable injury to the party affected, he may yet recover nominal damages.

In all cases damages must be reasonable, and where an obligation of any kind appears to create an unscionable and grossly oppressive damage, which may be contrary to substantial justice—no more than reasonable damages can be recovered.

Damages for a breach of an obligation to pay money only, is the amount which is due by the terms of the obligation, with interest on it.

The jury decides the amount of damages for seduction, for personal injuries, for malicious prosecution, for false arrest, for breach of promise.

If a seller fails to deliver personal property, when the price has been fully paid to him in advance, the damages are the same as in case of wrongful conversion.

Date: See Negotiable Instruments, 3093, 3092.

Days of Grace: See Negotiable Instruments, ¶3166, 3217; Bill of Lading. In some states three days are allowed for payment of a negotiable instrument, after its due date. California has no such rule.

Deeds: There are ten forms of deeds used in this State, namely: (1) Quit Claim; (2) Gift; (3) Survivorship; (4) Defeasance; (5) Sheriff's; (6) Tax; (7) Trust; (8) Corporate; (9) Grant; (10) Warranty.

1. **QUIT CLAIM DEED:** This form of deed is used to clear away some cloud upon a title. As, for example, when some remote heir to property might claim a very small interest in it, or when a husband desires to pass title of his community interest to his wife, or in any other case where the person conveying has a very small and unknown claim or interest in the property. A person may make a quit claim deed to any property in the world, whether he has or claims to have any interest in it or not; by doing so he does not in any manner imply that he has any interest in the property, past, present or future. The person who takes such a deed, accepts it with the risk that he is acquiring nothing.

The following phrases, when contained in a deed, pass whatever title the grantor had at the time of executing the deed: "Demise, release and quit-claim;" "hath and does hereby forever release and forever quit-claim;" "all my right, title and interest."

GIFT DEED: The wording of a gift deed is usually as follows: "In consideration of the love and affection which I bear to and have for ———, I hereby give to her (him) all that real property situated ———," etc., the balance being as in the customary grant deed.

DEFEASANCE: Sometimes one man executes and delivers a deed of property to another, saying, "Keep this as security for the loan, and return it to me when I pay you"—or words of the same effect—showing that the deed was not intended to pass the title forever, but was only given as security. Such a deed is called a deed of **DEFEASANCE**, and it must be foreclosed the same as if it were a mortgage, no matter what its wording may be. This deed should be recorded, the same as any other, so as to notify any other persons who may have an interest in the property.

SURVIVORSHIP OR JOINT TENANCY DEED: The peculiar feature of this form of deed is the right of survivorship. That is, where property is conveyed to two or more persons as joint tenants, each holds an equal share, with equal rights in all respects, and upon the death of one joint tenant the estate passes at once in its entirety to the survivors without probate and finally to the last survivor, and not to the heirs or representatives of the deceased. This form of deed is quite frequently used in conveying property to husband and wife, where each spouse desires the other to be sole heir. The wording is: "Grant to ——— and ——— (inserting in these blank spaces the names of the parties) and to the survivor of them."

A SHERIFF'S DEED is one given by the Sheriff to the purchaser at a foreclosure sale, or other sale under execution. It transfers all the title which judgment debtor had in the property sold at the time of the levy of the execution—but no after acquired title.

TAX DEED: A deed from the tax collector duly acknowledged or proved is (against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor inclusive, up to the execution of the deed. Such deed conveys to the State the absolute title to the property described therein, free of all incumbrances—except any lien of taxes levied for municipal purposes, and except when the land is owned by the United States or in this State, in which case it is *prima facie*

evidence of the right of possession, accrued as of the date of the deed to the State.

But if there have been any technical irregularity in the proceedings up to the time of the sale, the buyer may find himself holding nothing but a piece of paper, provided an action to QUIET TITLE is filed against him, and he cannot prove all the necessary facts. The business of buying tax and assessment titles is a very dangerous one.

CORPORATION DEED: The customary form is similar to a grant deed, except that it should contain a clause showing that the persons who sign the deed on behalf of the corporation, have the right to do so, either by resolution of the Board of Directors, or some other way. Just because persons are officers in a corporation, they do not have the right to deed its property, without authority.

GRANT DEED is the one customarily used in transfer of property in this State. When the word "grant" is used in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor (for himself and his heirs) to the grantee (his heirs and assigns) are implied, unless restrained by express terms contained in such conveyance (See Restrictions, Reservations and Conditions, under Real Property):

(1) That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest in it, to any person other than the grantee; (2) That such estate is at the time of the execution of such conveyance free from incumbrances done, made or suffered by the grantor, or by any other person claiming under him—such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. (See Incumbrances, Liens, Conditions and Covenants.)

Such a deed also carries the after acquired title; but it does not retroact so as to give the buyer a right to bring an action for past illegal use of water, when the land borders a stream.

BARGAIN AND SALE DEED: Is merely a form of the grant deed. The additional words "bargain, sell and convey" being used in it operate not merely to release, but to transfer any interest which the grantor has in the land at the time of the date of the deed.

WARRANTY DEED: This form is not used in this State for the reason that the covenant of warranty is implied by law in the use of the word "grant" in the grant deed. A warranty, however, undertakes upon the failure of the title to pay compensation in money for the loss thus sustained; this would equal the purchase price, with interest at the legal rate computed to the date of eviction. (See Warranty.)

A **TRUST DEED** is a conveyance, made for the purpose of securing a debt. It differs from defeasance, in that the grantee is some third person, who holds the legal title to the property, as Trustee, and is not made directly to the person to whom the debt is owed. It differs from the mortgage, in that there is no right of redemption, and no action at law is necessary to "foreclose"—as it is called, although there is no "foreclosure," as that term is known in law. If the debt is not paid when due, upon demand, the trustee must sell the property (as will be explained later), and his deed passes title at once to the buyer. A trust deed does not operate either as a lien or an incumbrance, for one cannot have an interest in real property, and a lien upon it at the same time.

If the Trustee will not sell, when requested to do so, the Court will do so for him. If a trust deed is made upon land when there are growing crops on it, and a chattel mortgage is afterward made upon these crops, the buyer at a sale under the trust deed will also secure title to the crops, free of the chattel mortgage.

Its validity has been frequently upheld by our Supreme Court, one case saying: "Trust Deeds, to secure payment of a debt, are an anomaly in our system, and are admittedly inconsistent with the policy of this State in regard to mortgages. It is at least doubtful if they would be now sustained but for a line of decisions made before they were very seriously questioned."

Strictly speaking, there is no "foreclosure," yet this is the term used when the trustee is given notice to sell, and does sell. In 1917 the Legislature passed an act by which the debtor in a trust deed is given some few rights which he never possessed before. Formerly it was only necessary to advertise the time and place of sale in "some newspaper of general circulation published in the county where the real property is situated." At present, a notice of the breach of the conditions of the deed, and of the intention of the trustee to sell, must be recorded in the office of the county

recorder of the county where the property is located; then three months shall elapse (during which time the debtor, of course, could save his property by paying what was due, with the costs added); then the trustee must give an additional notice of the time and place of sale, the same as under execution. (See Execution.) After the sale is made, the debt may not be satisfied. The creditor has the right to bid the property in for any reasonable sum—even it may be less than the amount of the debt, and if he receives less than the full amount at the sale, he has the right to sue the debtor for the difference—and can collect it, if the debtor has the money.

DELIVERY: A grant takes effect so as to vest the interest intended to be transferred only upon its delivery to the grantor.

A grant cannot be delivered to the grantee conditionally. Delivery to him, or his agent as such, is absolutely necessary, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

A grant duly executed is presumed to have been delivered at its date.

Though a grant be not actually delivered into the possession of the grantee, yet it is to be presumed constructively delivered in the following cases: (1) When the instrument is by the agreement of the parties at the time of its execution understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; (2) Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

Delivery depends upon the intention of both grantor and grantee. No precise words nor character of acts, are necessary, but the grantor must show that it is his intention to part with the title for all time.

But delivery of itself may not always pass title, as it might be shown that the paper was delivered for another purpose, or the grantee might run away with it, or obtain possession of it wrongfully, or by false pretenses. If a man was drunk and thought the deed was a letter, or a deed was delivered by some one who did not understand what his act meant—the deed would be voidable.

A husband executed a deed to property to his wife, but she

died before she recorded it, and he found it and destroyed it. This was a good delivery, and title passed.

In another case a husband and wife each deeded their property to the other, and then exchanged deeds, intending to have either deed recorded when either party should die. This was not a good delivery. (See Escrow.)

POSSESSION: Possession or the right to possession must be given to the grantee at the time of delivery of the deed.

The acts of dominion and ownership over land which may be sufficient to constitute an actual possession vary according to the condition, size and locality of the tract, usually evidenced by occupation, by a substantial enclosure, by cultivation, by appropriate use.

Possession of a river bed is sufficiently evidenced by clearing and cultivating suitable parts thereof, pasturing on parts upon which grass and clover grow, taking and selling gravel, selling timber and logs lodged by winter floods, renting portions and the enclosure of the entire tract by fences and barriers sufficient to turn stock.

"Possession of lot given and guaranteed to purchaser on transfer of title." Such possession means physical possession and unless so delivered the purchaser need not be called upon to complete his payments.

If there are tenants on the property, delivery could not be made unless the grantee was willing to accept the tenants. When one is in possession of land it is presumed that he is rightfully and lawfully there.

SIGNATURES: Witnesses are not required in this State, and the necessity for a seal has been abolished. Even the word "seal" or a scroll or the attaching of a wafer to the paper is not necessary—as it is in some other states. No special form of signature is necessary, as long as it shows that the grantor desired it to be his act. If the grantor cannot write and another guides his hand while he makes his signature it is good. Or if his signature is made by another person at his request and in his presence. Several persons, in addition to the grantor, may sign a deed, but do not convey any of their right in the property, even where a husband signs with his wife on a deed conveying title to his wife's separate property. If the grantor owns the land he may sign his own or any other name, and it will pass the title as between him

and the grantee. If his true name is in the body of the deed and he signs any other name, but acknowledges the deed by his true name, he passes title.

Defamation is effected by (1) slander or (2) libel.

Slander is false and malicious defamation by word of mouth which charges any person with crime, or punishment for crime; or imputes in him the present existence of an infectious, contagious or loathsome disease; or tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualifications in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his trade, profession, office or business that has a natural tendency to lessen the profits; or imputes to him impotence, or a want of chastity; or which by natural consequence, causes actual damage.

Libel is a false and unprivileged publication which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his business. The following expressions have been decided by our courts to be libelous: "You are a thief;" "she is tricky and unreliable and destitute of honorable or womanly characteristics;" "he sold out the support of his paper to a certain corporation for money;" "she is the paramour of a man not her husband;" "he set fire to a wood yard, in which a warehouse was located;" claiming that one attorney is in collusion with another; affinity; hypocrite.

To constitute libel, there must be malice (which see), actual or implied, on the part of the publisher.

1. In an action for libel or slander the clerk shall, before issuing the summons, require a written undertaking on the part of the plaintiff in the sum of five hundred (500) dollars, with at least two competent and sufficient sureties, specifying their occupations and residences, to the effect that if the action be dismissed or the defendant recover judgment, that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, or on appeal, not exceeding the sum specified in the undertaking. An action brought without filing the undertaking shall be dismissed.

2. Each of the sureties on the undertaking mentioned in the

first section shall annex to the same an affidavit that he is a resident and householder or freeholder within the county, and is worth double the amount specified in the undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution.

Defeasance: See Deeds.

Defect: See Negotiable Instruments, ¶3136, 3137.

Defenses: See Negotiable Instruments, ¶3138, 3139.

Deficiency Judgments: See Mortgage; Chattel Mortgage; Trust Deed; Installment Sales.

Delivery: See Deeds; Real Estate; Sales.

Delivery: See Contracts; Depository; Negotiable Instruments, ¶3097, 3111, 3115, 3148.

Demand: See Action; Personal Injuries; Negotiable Instruments, ¶3088, 3152, 3256a.

Demand is not necessary before filing an action (as is usually believed), unless, the cause of action depended on it. The filing of the suit is sufficient.

Demurrer: See Action.

Depose is every mode of written statement under oath or affirmation.

Depositor: See Deposits, ¶2.

Deposit of Personal Property: See Storage; Liens; Warehouseman; Findings; Pledge; Warehouse Receipts.

1. A DEPOSIT may be voluntary or (2) involuntary; and for safe keeping or exchange.

2. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the giver, or of a third person. The person giving is called the depositor, and the person receiving is called the depository.

3. An involuntary deposit is made (1) by the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner of the thing; or (2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property, committing it to the care of any person by reason of this necessity.

4. A person with whom a thing is deposited in such manner, is bound to take charge of it, if able to do so.

5. A deposit for keeping is where the depositary is bound to return the identical thing deposited.

6. A depositary for exchange is one in which the depositary is only bound to return the thing corresponding in value or in kind to that which is deposited.

7. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand (whether or not the deposit was made for a definite time) unless he has a lien upon the thing deposited (see *Liens*) or unless he has been forbidden or prevented from doing so by the owner of the thing—or by the act of the law, and if he has given the notice required in ¶10.

8. A depositary is not bound to deliver a thing deposited without demand, even where the deposit was made for a specified time.

9. A depositary must deliver the thing demanded at his residence, or place of business, as may be most convenient for him.

10. A depositary must give prompt notice to the person for whose benefit the deposit is made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him. (See ¶7.)

11. A depositary who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if, within a reasonable time afterward, such supposed owner does not claim it, and sufficiently establish his right to it, and also indemnify the depositary against the claim of the depositor, the depositary is exonerated from all liability to the person to whom he gave the notice—upon returning the thing to the depositor, or provided he assumes (in good faith) a new obligation in respect to the thing, to his prejudice. When a deposit is made in the name of two or more persons, deliverable or payable to either or their survivor or survivors, such deposit, or part of it, or increase of it, may be delivered or paid to either of said persons or to the survivor or survivors in due course of business.

12. A depositor must indemnify the depositary (1) for all damage caused to him by the defects or vices of the thing deposited and also (2) for all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

13. A depository of living animals must provide them with suitable food and shelter, and treat them kindly.

14. A depository may not use the thing deposited or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by any depositor, open it without the consent of the latter—except in case of necessity.

15. A depository is liable for any damage happening to the thing deposited (during his wrongful use of it) unless such damage is one which must inevitably have happened even though the property had not been used.

16. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depository may sell it for the best price obtainable, and retain the proceeds as a deposit—giving immediate notice of his proceedings to the depositor.

17. If a thing is lost or injured during its deposit, and the depository refuses to inform the depositor of the circumstances under which the loss or injury occurred (so far as he has information concerning them) or if the depository wilfully misrepresents the circumstances to the depositor—the depository is presumed to have wilfully—or by gross negligence—permitted the loss to occur. But such liability for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

GRATUITOUS DEPOSIT is a deposit for which the depository receives no consideration beyond the mere possession of the thing deposited. An involuntary deposit is gratuitous, the depository being entitled to no reward. A gratuitous depository must use, at least, slight care for the preservation of the thing deposited. The duties of a gratuitous depository cease: 1. Upon his restoring the thing deposited to its owner; or, 2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depository, under an emergency, cannot give such notice until the emergency which gave rise to the deposit is past.

19. So far as any service is rendered by a depository, or required from him, his duties and liabilities are those to be found under **Employer and Employee**.

20. DEPOSIT FOR EXCHANGE: A deposit for exchange

transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

Deposit in Court: See Tender; Offer to Compromise; Costa. When it is admitted by the pleadings, or shown upon examination of a party to the action, that he has in his possession, or under his control—any money or other thing capable of delivery—which, being the subject of litigation—is held by him as trustee for another party (or which is due to another party)—the Court may order the money or thing deposited in Court or delivered to such party, upon such conditions as the Judge may wish to impose. And if a party, before the commencement of the action, has offered to pay to the plaintiff a certain sum of money, and, then—at the beginning of the action, renews the offer, or actually deposits that sum in Court,—and the judgment is for no more than that amount—he cannot have costs assessed against him.

A **Deposition** is a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine. In all actions and proceedings where the default of the defendant has been duly entered, and in all proceedings to obtain letters of administration, or for the probate of wills and the issuance of letters testamentary thereon, where, after due and legal notice, those entitled to contest the application have failed to appear, the entry of said defaults, and the failure of said persons to appear after notice, shall be deemed to be a waiver of the right to any further notice of any application or proceeding to take testimony by deposition in such action or proceeding. Depositions must be taken in the form of question and answer. The words of the witness must be written down, in the presence of the witness, by the officer taking the deposition, or by some disinterested person appointed by him. It may be taken down in shorthand, in which case it must be transcribed into longhand by the person who took it down. When completed, it must be carefully read to or by the witness and corrected by him in any particular, if desired, by writing or causing his corrections to be written in the body or margin of or at the bottom of the deposition, and must then be subscribed by the initials near said corrections. If the parties agree in writing to any other mode, the mode so agreed upon must be followed. A deposition may be taken of any party to the action, at any time before trial, or

several times, if desired; or of a witness who is the only person who can state facts material to the action; or of a necessary witness outside of the state. The deposition may be read at the time of the trial, if the person is not present, or if he is present, it may be used to show that he is testifying contrary to what he said in his deposition—if such is the case. This right is a very valuable one, giving to each side full opportunity to find out all the facts, both in their favor and against them, and to discover before trial, what the opposing party may be expected to testify to.

Description: See Real Estate; Real Estate Agents.

Designs: See Inventions.

Deviation: See Insurance; Ships.

Discharge: See Bankruptcy.

Discharge: See Negotiable Instruments, ¶3200 and following. 3264, 3265d.

Dishonor: See Negotiable Instruments, ¶3170, 3192, 3195, 3196, 3214, 3219, 3222, 3229, 3230, 3231, 3233, 3239, 3246, 3251.

Drawee: See Negotiable Instruments, ¶3142, 3163, 3196, 3208, 3209, 3211, 3213, 3217, 3218, 3219, 3222, 3225, 3228, 3229, 3237.

Drawer: See Negotiable Instruments, ¶3110, 3142, 3245, 3151, 3160, 3170, 3211, 3295, 3212, 3219, 3220, 3223, 3224, 3228, 3231 to 3234 inc., 3239, 3244, 3265.

Duces Tecum: See Subpoena.

Due Process of Law: There is no one definition which will be accurate, or complete and appropriate under all circumstances. In each particular case it is such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which such belongs.

Duress: See Negotiable Instruments, ¶3136; Contracts; Bill of Lading, 2130C.

Duress consists in: 1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife; 2. Unlawful detention of the property of any such person; or, 3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Easement: See Real Property.

Ejectment: See Real Estate.

Elevator: See Carriers.

Emblems: See Crops.

Eminent Domain: See Costs.

Employee: See Convicts; Wages; Boycott; Picketing; Hours of Labor; Seaman; Master and Servant; Rest Day; Elections; Monopolies; Trade Marks; Conspiracy; Injunctions.

The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer, or of a third person.

Every employment is terminated: (1) By the expiration of its appointed term; (2) By the extinction of its subject; (3) By the death of the employee; or, (4) By his legal incapacity to act as such.

An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

An employment, having no specified term, may be terminated at the will of either party, on notice to the other. Employment for a specified term shall mean an employment for a period greater than one month.

An employment, for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

An employment, for a specified term, may be terminated by the employee at any time, in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

An employee who is not employed for a specified term, dismissed by his employer, is entitled to compensation for services rendered up to the time of such dismissal.

An employee who is not employed for a specified term and who

quits the service of his employer, is entitled to compensation for services rendered up to the time of such quitting.

Where a person is hired under an agreement that his work shall be satisfactory to the hirer, he cannot complain if he is discharged solely because his employer says that the work is not satisfactory to him. The employer is the sole judge, without regard to the reasonableness or justice of his decision.

If one knows that an employee is working under contract, and induces him to break that contract, the employer may recover damages; even though the employment was at will, or if the contract was for no specified time. An employer is entitled to the good will of his employees, precisely as a merchant is entitled to the good will of his customers, though they are under no obligations to trade with him continually. The value of the relation lies in the reasonable probability that by properly treating his employees, and paying them fair wages, and avoiding reasonable grounds for complaint, an employer will be able to retain them, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such probabilities is incalculably great.

An employer must in all cases indemnify his employee for losses occasioned by the former's want of ordinary care.

If one acts without consideration, and thus undertakes to do a service for another, he is not bound to perform such service; but if he actually enters upon its performance, he must at least use slight care and diligence in doing the act.

If one induces another to intrust him with the performance of a service (at his own special request) he must fully perform such service. In other cases, one who undertakes to do some service for nothing, may relinquish at any time.

An employee, who works for nothing, under a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

A contract to render personal service, other than a contract of apprenticeship, cannot be enforced against the employee beyond the term of five years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation (but see Injunction).

An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

An employee is bound to use such skill as he possesses, so far as same is required, for the service specified.

The employee may employ others to do the work where his personal attention is not contracted for.

Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment. (See Invention.)

An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Where a person, who is hired at a fixed salary, remains in the same employment without any new contract, the presumption is that the continued employment is at the same salary.

When service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of: (1) The death of the employer; or, (2) His legal incapacity to contract.

The parties to a contract of employment may, however, in writing, provide that it shall, notwithstanding the death of the employer, continue obligatory for and against his heirs and personal representatives, provided their liability shall be restricted to property received from and under him.

In the absence of proof of a DISCHARGE, and that it was wrongful, one can only recover for the amount actually due him at the time he filed a suit, and not for wages for the entire term of his agreed employment.

A discharge cannot be made by a secret intention on the part of the master. The servant must be notified in some manner. No set form of words is necessary, but any words or acts which show a clear intention on the part of the master to dispense with the servant's services, are sufficient.

Mere failure to pay wages does not amount to a discharge. This merely gives the servant the option of quitting, and the right to sue for the money then due and unpaid, or of continuing in the service, and then to sue for the salary as he earns it in the future—if it is still unpaid. Even closing up the master's business is not a discharge of the servant, if no other notice is given him.

Endorsement: See Indorsement.

Equity of Redemption. See Mortgages.

Escheat: When the title to property reverts to the State, by reason of lack of heirs, it is said to "escheat." (See Succession; Wills.) All property, real and personal, within the limits of this state, which does not belong to any person, belongs to the people. The title to the estate of a person who dies without a will, vests immediately in the heirs whether known or unknown. If the heirs are non-residents, and do not claim the property within five years from the death, or if there are no heirs or next of kin, this title becomes forfeited, without any judicial proceedings and even though the heirs be known, it reverts to the people, for the support of the public schools.

Escrow: When deeds are executed and delivered to some third person, to be held by him until some event happens—such as a payment of a certain sum of money, or the occurrence of a death, or during the time for the clearing up the clouds on a title—such person is called the escrow holder, and the act of holding this deed is called an escrow. (See Deeds.)

When deeds are delivered, thus, to be recorded at the death of the grantor, he parts with all his present title, and only is entitled to a life estate in the property. He cannot sell it to any other person, and giving back the deed to him—if the escrow holder would thus violate his trust—would not reinvest him with the title, any more than if the deed were torn up, or cancelled.

Estrays: See Animals; Findings; Fences. In 1919 the Legislature passed an act relating to estrays which is to be submitted to the vote of the people in each supervisorial district, but shall not in any case apply in the counties of Del Norte, Lassen, Shasta, Modoc, Siskiyou, Trinity.

Any person finding at any time any stray domestic animal or animals upon his premises, or upon premises to which he has the right of possession, or upon highways adjacent to it, may take up the same and have a lien thereon for all expenses incurred and costs in keeping and caring for said animal or animals, as hereinafter provided; and no person shall remove them from the possession of the taker-up, or from the possession of the officer to whom they may have been delivered, except as hereinbefore provided. The word "estray" as used in this act is intended to include all domestic ani-

imals that have strayed upon, or been found upon, lands other than those of their owner, or the public domain, or lands whose owner (or to which the person in possession thereof) has consented, may be passed over, or allowed to be entered on, by such animal. Any person taking up an estray animal or animals shall confine the same in a secure place and within one week thereafter shall publish in some newspaper of general circulation, printed and published in the county in which such estray is found, and also file with the county recorder of said county a notice containing a description of the animal or animals taken up, with the marks and brands, if they have any, together with the probable value of each animal, and a statement of the place where the taker-up found, and where he has confined the same. The county recorder shall receive for filing said notice, the sum of fifty cents. The said notice shall be so published for two weeks. If there be no newspaper of general circulation printed and published in the county where such estray is found, then in a newspaper published in an adjoining county within this state; provided, however, that the cost of publication does not exceed three dollars. If, however, the animal has the owner's brand or mark upon it, and such brand or mark has been recorded according to law, or if the finder knows the owner of said animal, or the person having charge of it, then, within five days after said animal is taken up he shall notify the owner of said animal, or other person having charge of it, which notice shall contain the same information as the notice to be published and recorded. This notice shall be in lieu of publishing and recording such notice, and for which notice he shall be entitled to the sum of fifty cents.

At any time within thirty days from the date of the filing of the notice specified in section two of this act, any person claiming such estray animal or animals shall appear and demand from the taker-up the possession thereof, and shall at the same time pay to the taker-up all damages, expenses, and costs incurred by reason of taking up said animal or animals, and upon receiving such damages, expenses and costs, the taker-up shall immediately deliver to the party claiming such animal or animals the possession thereof; such damages, expenses and costs shall be estimated as follows: 1. The total amount paid by the taker-up to the county recorder, and the reasonable cost of publishing said notice. 2. The sum of thirty cents per day for the keep-

ing and care of each horse, mule, jenny, ass, cow, bull, ox, steer or calf. 3. The sum of ten cents per day for the keeping and care of each sheep, goat, hog or other animal not hereinbefore specified, provided that the taker-up of said animal or animals must properly feed and water the same while under his care, and if he fails so to do shall forfeit all right of lien.

If the party claiming such estray animal or animals is dissatisfied with the amount charged by the taker-up for costs and expenses, he shall tender to the taker-up the proper amount for it, and if the said tender be refused, the party claiming such estray animal or animals shall within ten days thereafter commence, in the proper court, suit against the taker-up for the recovery of the possession of such estray animal or animals, in which said action the taker-up may set forth his expenses and costs, and said matter, together with accruing expenses and costs to the time of the entry of the judgment, shall be determined by the court in accordance with the provisions of this act, and the amount of all such expenses and costs, and the costs of said action shall be included in any judgment awarded by said court, and such costs in said action shall be in favor of the plaintiff in said action and against said defendant, if the court shall find that the amount tendered by the plaintiff to the defendant was not less than the proper amount; otherwise said costs shall be in favor of the defendant and against the plaintiff. Without the consent of defendant in any such action, no return of such animal or animals shall be adjudged until the plaintiff shall pay to defendant or deposit in court payable to him, the amount of all such expenses and costs in said action; and in case such payment or deposit be not made within ten days after the same shall have been determined by the court, or said action be not prosecuted with diligence, then the said action may be dismissed on motion of defendant without notice, in case of such dismissal, the defendant shall have judgment for his costs. In any such action for plaintiff to recover, it shall be incumbent on him to establish an existing right in himself to the possession of such animal or animals. If no person appears and claims the animal or animals taken up within thirty days after the filing of the notice; or if a person does appear and claim the animal or animals taken up within thirty days after the filing of the notice, but shall fail to pay to the taker-up the expenses and costs as provided, and shall fail to commence and prosecute with diligence an action for the

recovery of the possession of such estray animal or animals within the time required; or if said action shall be dismissed; then the taker-up shall, in writing, notify a constable, or other officer of the township or county in which said animal or animals are held, which notice shall specify that he has complied with all the provisions of this act, and that a claimant of said animal or animals has failed to appear and claim the same, or if he has appeared that he has failed to pay the expenses and costs and has failed to commence or prosecute with diligence an action for the recovery of the possession of such animal or animals within the time and in the manner provided, or that said action has been dismissed, and that such animal or animals are held by him subject to sale. Said constable, or officer, shall immediately proceed to sell such animal or animals at public sale, in conformity with the law concerning sales on execution, and shall be entitled to the same fees as are provided by law for sales under execution. Out of the money realized from the sale of estrays, the constable or other officer shall first retain his fees; he shall then pay to the taker-up his expenses and costs estimated as provided, or as much of it as the funds in his hands will permit, and the surplus, if any, he shall pay to the county treasurer, to be held by him for the owner of the estray or estrays for which it was received in payment. If any person or persons shall, within one year thereafter, prove to the satisfaction of the board of supervisors of the county in which the estray or estrays were sold, that he or they are entitled to the sum so held by the county treasurer, or any part of it, the said board of supervisors shall order such sum to be paid over to the person or persons; and if not so proven within one year, then the same shall become a part of the common school fund of said county.

All sales made by any constable, or other officer, under the provisions of this act, shall convey a good and valid title to the purchaser, and the owner of the estray or estrays so sold shall thereafter be barred from all right to recover the same. The taker-up of an estray animal or animals shall use reasonable care to preserve the same from injury, but if an estray animal or animals die or escape from the possession of the taker-up at any time while he is holding the same under the provisions of this act, the taker-up shall not be held liable in any manner on account of such animal or animals. Nothing in this act shall affect the laws or regulations in force or which may be in force regarding estrays, the poundkeeper, or other

pound officer within the limits of any city or town where laws regarding estrays are in force.

Eviction: See Real Estate; Landlord and Tenant.

Excavator. See Liens.

Exceptions: See Real Estate.

Exchange: See Sales; Personal Property; Fraud; Contracts; is a contract by which the parties mutually give—or agree to give—one thing for another, when neither thing (or both things) is money only. When the value of the thing to be given either party is more than \$200, then the rule as to void sales applies. The provisions of the article on Sales applies to exchanges. Each party has the right and obligation of a seller as to the thing which he gives, and of a buyer as to the thing which he takes. On an exchange of money, each party warrants to the other the genuineness of the money given by him.

Execution: See Actions; Appeal; Attachment; Title; Sales; Exemption; Bill of Lading, 2128h, 2129e; Judgments; Warehouse Receipts, 25, 42.

The party in whose favor judgment is given may, at any time within five years after the entry of it, have a writ of execution issued for its enforcement.

If, after the entry of the judgment, the issuing of execution on it is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the five years within which execution may issue. The Court or the Judge of it shall not have the power, without the consent of the adverse party, to stay, for a longer period than thirty days, the execution of any judgment or order the execution of which would be stayed on appeal only by the execution of a stay bond. All goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment. Gold dust

must be returned by the officer as so (much) money collected at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

The execution will be issued at any time within five years after rendition of judgment (in the Justices' Court), and afterward in the Superior Court, if the party entitled to the judgment knows where there is property which can be levied upon. Upon making affidavit to this effect, and applying to the Court, an order will be made instructing the Clerk to issue the execution—even at any time after the five year period.

SUPPLEMENTARY PROCEEDINGS: If the officer cannot find any property upon which to satisfy the execution, he will return it to the court which issued it, wholly unsatisfied. The Judge of that court will then issue an order (upon application of the judgment creditor showing these facts), requiring the judgment debtor to appear before that court at a certain day and to then testify under oath concerning the property which he has. This procedure is called "Supplementary Examination." At the same time, other persons who may be suspected to be holding property belonging to or for the benefit of the judgment debtor, may be brought into the same court by subpoena and also examined under oath regarding these matters.

Exemptions, (FROM EXECUTION). See Attachment; Actions; Wages; Bankruptcy.

An attachment cannot hold, nor can an execution be levied, upon any of the following property if the owner of it objects by claiming his exemption rights: Chairs, tables, desks and books, to the value of two hundred dollars, belonging to the judgment debtor. Necessary household, table and kitchen furniture belonging to the judgment debtor, including one sewing machine, stoves, stove-pipes, and wearing apparel, beds, bedding and bedsteads, hanging pictures and drawings, drawn or painted by any member of the family, and family portraits and their necessary frames, provisions actually provided for individual or family use, sufficient for three months; three cows and their sucking calves; four hogs, with their suckling pigs; and food for such cows and hogs for one month; poultry not exceeding in value twenty dollars; also one piano, one shotgun and one rifle. The farming utensils or implements of husbandry of the judgment debtor, not exceeding in value the sum of one thousand

dollars; also two oxen, or two horses, or two mules, and their harness, one cart or wagon, and food for such oxen, horses or mules for one month; also all seed, grain or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars; and seventy-five beehives, and one horse and vehicle belonging to any person who is maimed or crippled, and the same is necessary in his business.

The tools or implements of a mechanic or artisan necessary to carry on his trade; the notarial seal, records and office furniture of a notary public; the instruments and chest of a surgeon, physician, surveyor, or dentist, necessary to the exercise of their profession, libraries and necessary office furniture; the professional libraries of attorneys, judges, ministers of the gospels, editors, school teachers, and music teachers, and their necessary office furniture; and one safe; also the musical instruments of music teachers, actually used by them in giving instructions; all the indexes, abstracts, books, papers, maps, and office furniture of a searcher of records necessary to be used in his profession; also the typewriters, or other mechanical contrivances employed for writing in type, actually used by the owner thereof for making his living; one bicycle, when the same is used by its owner for the purpose of carrying on his regular business, or when the same is used for the purpose of transporting the owner to or from his place of business.

The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in the State, supported in whole or in part by his labor; but where debts are incurred by any such person or his wife or family, for the common necessities of life, or have been incurred at a time when the debtor had no family residing in this State, supported in whole or in part by his labor the one-half of such earnings above mentioned, are nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred. No portion of the wages or earnings of a man without a family are exempt from execution.

All court-houses, jails, public offices and buildings, lots, grounds and personal property; the fixtures, books, papers and office be-

longings of any city or county of this State, and all cemeteries, public parks and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations and the lots and grounds thereto belonging and appertaining, owned or held by such town or incorporated city or dedicated by any town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State. All materials not exceeding \$1000 in value purchased in good faith for use in the construction, alteration, or repair of any building, mining claim, or other improvement, as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement. The shares held by a member of a homestead association duly incorporated, not exceeding in value one thousand dollars, if the person holding the shares is not the owner of a homestead under the laws of this State. All monies, benefits, privileges or immunities in any manner growing out of any life insurance on the life of the debtor, if the annual premiums paid do not exceed five hundred dollars. All fire engines, hooks and ladders, with carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this State. All uniforms, arms, accoutrements required by law to be kept by any person, and also one gun to be selected by the debtor.

Two horses, two oxen, or two mules, and their harness, and one cart or wagon, one dray or truck, one coupe, one hack or carriage, for one or two horses, by the use of which a cart-man, drayman, truckman, huckster, peddler, hackman, teamster or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments used by a physician, surgeon, constable or minister of the gospel in the legitimate practice of his profession or business, with food for such oxen, horses or mules for one month. One fishing boat and net, not exceeding the total value of five hundred dollars, the property of any fisherman, by the lawful use of which he earns a livelihood. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also, his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements and appliances, necessary for carrying on any mining operations, not exceeding in value the aggregate sum of five hundred dollars; and

two horses, mules, or oxen, with their harness and food for such horses, mules or oxen for one month, when necessary to be used in any whim, windlass, derrick, car, pump, or hoisting gear; and also his mining claims actually worked by him, not exceeding in value the sum of one thousand dollars. Seamen and sea-going fishermen's wages and earnings not exceeding three hundred dollars. Nautical instruments and wearing apparel of any master, officer or seaman of any steamer or other vessel.

All machinery, tools and implements in and for boring, sinking, putting down and constructing surface or artesian wells; also, the engines necessary for operating such machinery, implements, tools, etc.; also, all trucks necessary for the transportation of such machinery, tools, implements, etc., to the value of one thousand dollars. Shares of stock in any building and loan association to the value of one thousand dollars. All money received by any person, a resident of the State, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned or invested by him. Money obtained from any policy of insurance upon a homestead is exempt from execution, and cannot be attached. The family residence, with land and appurtenances thereof, when declaration of homestead has been made thereon, to the value of five thousand dollars for head of family, and one thousand dollars for any other person.

No article or species of property mentioned above is exempt from execution issued upon a judgment recovered for its purchase price; or upon a judgment of foreclosure of a mortgage or other lien thereon.

Expert is one who has special knowledge of any science, trade or occupation (to be determined in each case by examination before the judge who tries the case where the expert is desired to testify). Persons have been considered experts to testify to the following matters: Method of tying lumber for hoisting; of moving boilers; or loading live stock, or handling heavy stones; scrubbing in steam plant; stopping of electric car; structure of jetty; soundness of rope; size of nut or bolt, and as to use of derricks; doctors; handwriting; scientists; contractors; etc.

A Factor (See Agency Guaranty) is an agent who (in the pursuit of an independent calling), (1) is employed by another to sell property for him, and (2) who is given possession or control of such prop-

erty, (3) or who is authorized to receive payment from the purchaser for the property. He must obey the instructions of his principal to the same extent as an employee, notwithstanding any advances of money which he may have made to his principal upon the purchase price of the goods consigned to him, except that if his principal forbids him to sell at the market price—he may, nevertheless, sell for his own reimbursement—after giving notice to his principal of his intention to do so, with the time and place of sale—and also proceeding in all respects as if the property were pledged to him. See Pledge. He may sell property consigned to him on such credit as is usual; but if he has once agreed with the purchaser upon such terms, he may not extend them. One who charges his principal with a guaranty commission on a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser but he does not by so doing assume any additional responsibility for the safety of his remittance of the proceeds. One who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility for it without the consent of his principal. See Guaranty.)

In addition to the authority of agents in general (see Agents) a factor has actual authority from his principal, unless specially restricted (a) to insure property which is consigned to him uninsured; (b) to sell, on credit, anything intrusted to him for sale—except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter such goods; (c) to delegate his authority to his partner or servant,—but not to any person in an independent employment. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

Farm Name: See Trade Mark.

False Arrest: See False Imprisonment; Arrest.

FALSE IMPRISONMENT is the unlawful and total restraint of the liberty of a person. One who is arrested and detained by another, without legal authority (see Arrest), is said to be falsely imprisoned. The imprisonment is any prevention of the movement of a person from place to place, or his full action according to his pleasure and will. If the imprisonment is lawful, it could not have

been malicious; and if malicious, it could not have been lawful. See **Malicious Prosecution**.

Feeding Stuffs: See **Commercial Feeding Stuffs**.

Fences: See **Real Estate**, §18; **Estrays**; **Liens**. Each adjoining owner owns one-half of the wall which is upon his land, subject to the easement in the other, to use the wall as a party wall between two buildings. Adjoining owners are mutually bound to equally maintain, first: The boundaries and monument between them, and; second: The fences between them, unless one of them chooses to let his land lie without fencing. If he afterward encloses it, he must refund to the other a just proportion of the value (at that time) of any division fence made by the latter. Any fence or other structure in the nature of a fence, unnecessarily exceeding ten feet in height, maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property, shall be deemed a private nuisance, but one probably may erect a structure of any height if entirely upon his own land.

Fictitious Name: See **Name**.

Findings: See **Deposit**; **Liens**; **Storage**; **Estrays**; **Pledges**. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire. If the finder of a thing, other than a domestic animal takes possession of it, or if a person saves any such animal from drowning or starvation, he must, within a reasonable time, inform the owner of it, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring for it. If the owner is not known to such finder or saver, he must, within five days, file an affidavit with the justice of the peace of the county whose office is nearest to the place of such finding or saving, particularly describing the property and the time, place, and circumstances under which it was found or saved. Such justice must summon three disinterested persons to appraise the property. They, or a majority of them, must make two lists of the valuation and description of the property, by them verified, and deliver one of such lists to the justice of the peace, to be kept by him on file in his office, and the other list must be delivered to such finder or saver, who must, within five days thereafter, cause it to be filed for record in the office of the county recorder of the county, who must record it in a book

known as the "Estray and Lost Property Book." The finder of a thing may, in good faith, before giving up, require reasonable proof of ownership from any person claiming it. He is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily by him about it, and to a reasonable reward for keeping it. He may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense. He may sell it (if it is a thing which is commonly the subject of sale), when the owner cannot, within reasonable diligence, be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases: 1. When a thing is in danger of perishing, or of losing the greater part of its value; or, 2. When the lawful charges of the finder amount to two-thirds of its value. A sale under the provisions of the last paragraph must be made in the same manner as the sale of a thing pledged.

If no owner appears within six months after such finding or saving and offers reasonable proof of his ownership, and compensates, or in good faith offers to compensate, the finder or saver for the expense necessarily incurred by him, then such property vests in such finder or saver, unless it is of a greater value than twenty dollars. If of such greater value, he must publish a copy of such verified list for three successive weeks in some newspaper of general circulation published in the county, and if the owner does not, within one year after the completion of such publication, prove the property and pay, or in good faith offer to pay all charges on it, the title of it vests in such finder or saver. If the finder or saver of the property does not comply with the provisions of former sections; or if (though he does so comply), he refuses to surrender the property to an owner who has made reasonable proof of ownership, and paid (or in good faith offered to pay), all legal charges on it, he is liable to the owner for double the value of the property, and the owner may exonerate himself from all liability arising out of such property by surrendering or offering to surrender it in satisfaction of it. These provisions have no application to things which have been intentionally left by their owners.

Fire: See Act of God; Lease, under Landlord and Tenant; Deposit; Storage; Warehouseman; Arson; Insurance.

Every person who starts a fire in hay, grain, stubble, or grass,

without first carefully providing, by plowing or otherwise, for the keeping of said fire within and upon the premises upon which it is started or set out, and by reason of the non-providing of such barrier any property of an adjoining or contiguous resident or owner is injured, damaged, or destroyed, is guilty of a misdemeanor. He is also liable in treble damages, if the fire escapes to another's premises. A railroad company is not an insurer at all events against the consequences of fire set by its locomotives; it is only liable for fires negligently caused by it. The facts upon which the liability of the railroad rests must be proved by satisfactory evidence; they cannot be established by mere conjecture.

If a building, partly completed, is destroyed by fire, the loss falls upon the contractor—if the contract was one where it must be completed before payment; but if he had received some of the money, he could not have the balance until he completed the building as far as he had agreed to in order to receive the next payment.

Fixtures: See Improvements; Real Estate; Landlord and Tenant.

A fixture is an article of personal property affixed to the freehold; when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it. But a tenant, at any time during the continuation of his term, may remove from the leased premises, anything which is affixed to the premises, for the purposes of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, or unless the thing has become an integral part of the premises, because of the manner in which it was affixed. In this State, the following articles have been decided to be permanently affixed: Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine; A store front consisting of heavy plate glass and marble; Engine and boilers, fastened to the land by bolts and nuts, to timbers imbedded in the soil; machines, such as soap kettles, boilers, etc., of permanent character; Monument erected in a public park; Mosquito screens attached to a hotel; A pump planted on the ground and connected with a pipe for water; Tanks with a water filter in a hotel; Gas fixtures.

The following are temporary only and may be removed: Cas-

ing in an oil well; Furnace in a house, with its pipes; A portable fence; The name of a hotel; A wharf constructed below low water mark; A livery stable standing upon mud sills; A house and barn erected to enable persons to hunt and fish upon certain premises; A building erected as an office and a place for employees to sleep; A conservatory used by a flower vendor; A building erected to cover or contain machinery, or for the purpose of a saloon.

If a tenant has a written agreement permitting him to remove fixtures, he may take them out within a reasonable time **AFTER** the expiration of his term; but if they are trade fixtures only, and there is no such agreement, he must remove them **BEFORE** his term expires. If a tenant does not remove the fixtures which he has been given the right to do, but instead makes a new lease which says nothing about fixtures, he cannot remove those fixtures at the expiration of the second lease. When he made the new lease, he was in the same position as if the landlord had leased the fixtures to him, together with the land or the buildings.

Fish, Right to: See Real Property.

Flags: Neither the flag of the United States nor the flag of California must be desecrated, mutilated, nor made improper use of, and the flag of the United States must be hoisted above each school-house during each session of school.

The bear flag is selected and adopted as the state flag of California.

Flying Machines: See Aviation.

F. O. B.: An abbreviation for "free on board," used to designate that the commodity is to be delivered on board cars or ship, without cost to the buyer. "F. O. B. SS. Jones" does not mean that the articles are to be loaded on board the ship, but that they are to be delivered at the dock, alongside the ship.

Food Warehouseman (1919 Statute): See Warehouseman; Weights and Measures; Food; Monopoly.

Sec. 1. The term "food commodities" as used in this act shall be construed to mean all products, stuffs, preparations, substances, or articles which are customary or proper for food for human beings, and shall include meat and meat products, fruit, vegetables, fresh fish, shellfish, game, poultry, eggs, butter, cheese and milk.

Sec. 2. The term "commission" when used in this act means the railroad commission of the State of California. The term

"commissioner" when used in this act means one of the members of the commission. The term "corporation" when used in this act, includes a corporation, a company, an association and a joint stock association. The term "person" when used in this act, includes an individual, a firm and a co-partnership. The term "food warehouseman" as used in this act shall be construed to mean and shall include every person, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating, or managing any building, structure, warehouse, elevator or plant in which food commodities, regularly received from the public generally, are stored for compensation, including cold storage plants and refrigerating plants, but not including private homes, hotels, restaurants or exclusively retail establishments or others not storing articles of food for other persons for compensation. Every person, or corporation controlling, operating, or managing any building, structure, warehouse, elevator, or plant as aforesaid, shall be deemed to be engaged in the storage of food commodities within the meaning of this act.

Sec. 3. Every food warehouseman doing business in the State of California is hereby declared to be a public utility, and subject to the jurisdiction, control and regulation of the railroad commission of the State of California. No food warehouseman shall engage in the storage of food commodities in the State of California, except in accordance with these provisions.

Sec. 4. It shall be unlawful for any food warehouseman, doing business in the State of California, to discriminate, attempt to discriminate between persons, firms or corporations offering food commodities for storage or desiring to avail themselves of the warehousing or storage facilities afforded by such food warehouseman; or to accept food commodities from any person, firm or corporation at rate or charges exacted or received from other persons, firms or corporations for the same or substantially similar warehousing or storage service; or to grant, allow, or deduct from the rates or charges exacted or received from any person, firm, or corporation any rebate, discount, deduction, concession, refund, or remittance not granted and allowed to all other persons, firms, or corporations under the same or substantially similar circumstances and conditions; or to make or give, or attempt to make or give, any preference or advantage to any person, firm or corporation not

made or given to every other person, firm or corporation; or by any scheme of rebates, discounts, deductions, concessions, refunds, remittances, collateral contracts, discriminating charges, discriminating rates, or in the service or facilities afforded, or by any other device whatsoever, discriminate or show preference, or attempt to discriminate or show preference, between persons, firms, or corporations offering food commodities for storage; or by any of the practices or devices aforesaid to monopolize or attempt to monopolize, or combine, or conspire with others to monopolize in any locality the business of storing food commodities; and it shall likewise be unlawful for any person, firm or corporation to solicit, accept, receive or attempt to obtain from any food warehouseman any rebate, discount, deduction, concession, refund, or remittance, or to solicit, accept, receive, or attempt to obtain from any food warehouseman, any preference, or advantage, either in rates or charges, or in service or facilities afforded.

Sec. 5. Every food warehouseman doing business in the State of California shall file with the railroad commission within such time and in such form as the commission may designate and shall also print and keep open to public inspection at each and every building, structure, warehouse, elevator, or plant for the storing or warehousing of food commodities maintained by him in said state, schedules showing all rates and charges, which are in force for warehousing and storage services of every description, including sorting, handling, weighing, elevating, and packing charges, and all charges directly or indirectly connected with such services, together with all rules and regulations which in any manner affect or relate to rates or charges, and showing plainly when the same become effective, such rates to be uniform in their operation and to apply with equal force and effect to all persons, firms or corporations dealing with said food warehouseman. The railroad commission shall have power after hearing to fix and determine any such rate, charge, rule or regulation, and prescribe by order such changes in the form of the schedules referred to in this section as it may find to be just and reasonable. Unless the commission otherwise orders, no change shall be made by any food warehouseman in any rate or charge, or in any rules or regulations affecting rates or charges, except by permission of the railroad commission after proper notice. The commission, for good cause shown, may

allow changes without requiring the notice, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. No food warehouseman shall engage in the business of storing food commodities unless the rates and charges upon which the same are stored are filed and open to public inspection as aforesaid. No food warehouseman shall refund or remit in any manner or by any device, any portion of the rates or charges filed and open to public inspection as aforesaid, or demand, collect, or receive, directly or indirectly, from any person, firm or corporation, any different sum for warehousing or storage services than the rates and charges filed and open to public inspection as aforesaid, or directly or indirectly make any charge for such services not shown by the schedule aforesaid; nor shall any person, firm, or corporation solicit, accept, receive, or attempt to obtain from any food warehouseman any rate or charge not filed and open to public inspection as aforesaid.

Sec. 6. Every contract, expressed or implied, by any person, firm or corporation in violation of the provisions of section four or section five of this act, is declared to be illegal and to be utterly void and no recovery shall be had on it.

Sec. 8. The attorney general of the State of California is authorized and directed, whenever he has reasonable grounds to believe that any person, firm or corporation has knowingly accepted or received from any food warehouseman, directly or indirectly, any rebate, discount, deduction, concession, refund or remittance from the rates or charges filed and open to public inspection as in section five, to prosecute a civil action in the name of the people of the State of California in the proper court to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years before the commencement of such action.

Sec. 9. Any person, firm or corporation may maintain an action to enjoin a continuance of any act or acts in violation of section four or section five, or of any order, rule or regulation of the railroad commission, and, if injured by it, for the recovery of damages in an amount equal to three times the amount of actual damages sustained. If in such action, the court shall find that the defendant is violating section four or section five, or any order, rule or regulation of the railroad commission, it shall enjoin the

defendant from a continuance of such violation, and it shall not be necessary to allege or prove actual damage to plaintiff in addition to it.

Sec. 10. Any person or persons, or corporation, who, or which shall violate section four or section five, or any order, rule, or regulation of the railroad commission, or who shall procure, aid or abet any person, firm or corporation in any such violation of it, shall, if a person, be punished by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding six months or by both such fine and imprisonment, and, if a corporation, by a fine not exceeding three thousand dollars.

Sec. 12. The legislature hereby declares that the purpose of this act is to safeguard the public against the creation and perpetuation of monopolies, and to foster and encourage competition, by prohibiting unfair and discriminating practices by which fair and honest competition is destroyed. The legislature hereby further declares that food warehousemen, as defined in section two of this act, are engaged in a business, tending to monopoly, and that by reason of such monopolistic tendency and by reason of its vital connection with the distribution of public necessities, such business is clothed with a public interest and subject to public regulation and control for the public welfare as a public utility, as in this act provided. This act shall be liberally construed that its beneficial purpose may be subserved.

Forcible Detainer: See Landlord and Tenant; Unlawful Detainer. Every person is guilty of a forcible detainer who either: 1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peaceably or otherwise; or 2. Who, in the night-time, or during the absence of the occupancy of any lands, unlawfully enters upon real property, and who, after demand made for the surrender of it, for the period of five days, refuses to surrender it to such former occupant. The occupant of real property is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Forcible Entry: See Forcible Detainer; Unlawful Detainer; Landlord and Tenant. Every person is guilty of a forcible entry who either: 1. By breaking open doors, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or

into any real property. 2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession. If there is no evidence that the entry upon the premises was accompanied by any kind of violence or circumstances of terror, or that the party in possession was turned out by force, threats or menacing conduct, there is no forcible entry; even if the party in possession was there unlawfully—the five day notice must be served upon him before commencing an action. No damages can be recovered, unless the possession of the premises is also recovered.

Foreclosure: See Mortgages; Chattel Mortgages; Deed.

Foreign Corporations: See Corporations.

Foreign Bill of Exchange: See Negotiable Instruments, ¶3210, 3211, 3233.

Forgery: See Crimes; Checks; Negotiable Instruments, ¶3104. Every person who has in his possession, or receives from any other person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank or unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed to defraud any person, is punishable by imprisonment in the state prison for not less than one year nor more than fourteen years.

Fraud: See Negotiable Instruments, ¶3136; Rescission; Insurance; Real Estate; Statute of Frauds; Assignments; Contracts; Transfer; Bill of Lading, 2130b.

Fraud is either actual or constructive. Actual Fraud is always a question of fact and (as applied to Contracts) consists in any one of the following acts, committed by a party to the contract (or with his connivance) with intent to deceive any other party to the contract, or to induce that other party to enter into the contract (a) One who does not believe a fact to be true, but who nevertheless suggests it to be true, as a fact; (b) a positive assertion of that

which is not true, by a person who believes it to be true, but yet made in a manner not warranted by his information (c) suppressing that which is true, by one having knowledge or belief of the fact; (d) a promise made without any intention of performing it; (e) any other act fitted (expected) to deceive. Constructive Fraud consists (a) in any breach of duty, which gains an advantage to the person in fault, or any one claiming under him (even without any fraudulent intent) by misleading another to his prejudice, or to the prejudice of any one claiming under him; (b) in any act or omission which the law specially declares to be fraudulent, without respect to actual fraud.

Freight: See Bottomry; Carriers; Warehouseman.

Fungible Goods: See Warehouse Receipts.

Garage Man: See Liens; Accretion; Personal Property; Automobile Law; Sales; Installment Contracts.

Garnishment: See Attachment.

Gas Claims: See Mining Law.

Gifts: See Personal Property.

Gift Deed: See Deeds; Gifts.

Goods: See Personal Property; Warehouseman; Warehouse Receipts; Fungible Goods.

Good-Will of a business is the expectation of continued patronage, but it does not include the right to use the name of any person from whom it was acquired. See Trademarks. It is property, transferable like any other; and the person transferring it may also transfer with it the right to use the name under which the business was conducted. But the good will cannot be transferred separate from the business. See Employer and Employee; Personal Property. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or any part of it, so long as the buyer (or any person deriving title to the good will from him), carries on a like business in that county.

Grading Lien: See Mechanics' Lien, ¶1191.

Grant Deed: See Deeds.

Grazing Lien: See Liens.

A **Guaranty** is a promise to answer for the debt, default, or miscarriage of another person. A person may become guarantor even without the knowledge or consent of the principal. Where a guar-

anty is entered into at the same time with the original obligation or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation. Except as prescribed by the next paragraph, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing; 1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promises; 2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made in terms or under circumstances such as the party making the promise is the principal debtor, and the person in whose behalf it is made his surety. 3. Where the promise, being for a previous obligation of another, is made upon the consideration that the party receiving it cancels the previous obligation, accepting the new promise as a substitute for it; or upon the consideration that the party receiving it releases the property of another from a levy (or his person from imprisonment), under an execution on a judgment obtained upon the previous obligation; or upon a consideration benefiting the promisor, whether moving from either party to the previous obligation, or from another person. 4. Where a factor undertakes, for a commission, to sell merchandise and guaranty of sale. 5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or, for a new consideration, and in connection with such transfer enters into a promise respecting such instrument. See Factor.)

A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur un-

der those terms which are most common in similar contracts at the place where the principal contract is to be performed. A guaranty to the effect that an obligation is good, or is collectable, imports that the debtor is solvent, and that the demand is collectable by the usual legal proceedings, if taken with reasonable diligence. A guaranty, such as is mentioned in the last paragraph, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected by it. In the cases mentioned the removal of the principal from the state, leaving no property in it from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence to acquire information of such default and the creditor has actual notice of it. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty. A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

A guarantor is exonerated (except so far as he may be indemnified by the principal), if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect or the remedies or rights of the creditor

against the principal, in respect to it, is in any way impaired or suspended. A promise by a creditor, which for any cause is void (or voidable by him at his option), does not alter the obligation or suspend or impair the remedy, within the meaning of the last paragraph. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement. The acceptance by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does otherwise affect it. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor. A guarantor who has been indemnified by the principal, is liable to the creditor, to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

A surety is one who at request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security for it. One who appears to be a principal (whether by terms of a written instrument or otherwise), may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal. A surety cannot be held beyond the express terms of his contract and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety. Performance of the principal obligation, or an offer of such performance, duly made as provided in the laws of this State, exonerates a surety.

A surety is exonerated; (1) In like manner with a guarantor; (2) To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or, (3) To the extent to which he is prejudiced by an omission of the

creditor to do anything, when required by the surety, which it is his duty to do. A surety has all the rights of a guarantor, whether he become personally responsible or not. A surety may require his creditors to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced. A surety may compel his principal to perform the obligation when due. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by next paragraph. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by him afterward, whether the surety was aware of the security or not. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon a maturity of the obligation, compel the application of such security to its satisfaction.

Guest: See Inn; Hotel; Citizens.

Habeas Corpus means "produce the body." It is a petition addressed to a superior tribunal, calling to the court's attention that a certain person is being confined in prison illegally—and stating the reason for such illegality. It required the person holding the prisoner to show cause why such imprisonment is legal, and usually is sought to try the validity of some law or ordinance. The privilege of the writ of habeas corpus shall not be suspended unless when, in

cases of rebellion or invasion, the public safety may require its suspension.

Hay Baler: See Liens. The term "baler" or "presser" as referred to in this act shall mean the person, firm, association, or corporation owning or having possession of or operating a hay press. Any person baling hay for compensation shall employ scales that have been tested and sealed by the sealer of weights and measures and any record of weight forming the basis of settlement in the sale or purchase of baled hay shall be the true net weight of such baled hay. No baler or presser of hay shall put or conceal in any such bale of hay anything whatever for the purpose of increasing the weight of such bale with intent to defraud. Hay when sold, offered, or exposed for sale shall be sold by avoirdupois weight and a ton shall consist of two thousand pounds net weight; providing, however, that hay may be sold by the bale in which case the net weight of the bale shall be indicated on a tag securely fastened to the bale. When any hay is shipped by a common carrier in bales and where such bales become broken, the approximate weight of such broken bales shall be included in the total weight of the hay shipped. Any person, firm or corporation, violating any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars, or more than one hundred dollars. (1919 statute.)

Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. See Landlord and Tenant. The products of a thing hired, during the hiring, belong to the hirer. An agreement to let upon hire binds the latter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same. The hirer of a thing must use ordinary care for its preservation in safety and in good condition, and he must repair all deteriorations or injuries thereto occasioned by his want of ordinary care. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded. See Rescission. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon. 1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the

parties; or, when the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

The hirer of a thing may terminate the hiring before the end of the term agreed upon: 1. When the letter does not, within a reasonable time after request to fulfill his obligation, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or, 2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer. The hiring of the thing terminates: 1. At the end of the term agreed upon; 2. By the mutual consent of the parties; 3. By the hirer acquiring a title to the thing hired superior to that of the letter; or, 4. By the destruction of the thing hired. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated by it. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations of it not occasioned by the fault of the hirer and not the natural result of its use. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter. If the letter fails to fulfill his obligations, as prescribed by preceding section, the hirer (after giving him notice to do so, if such notice can conveniently be given), may expend any reasonable amount necessary to make good the letter's defaults, and may recover such amount from him. (See Landlord and Tenant.)

Holder for Value: See Negotiable Instruments, ¶8107, 8182 and following; Bill of Lading.

Holidays are every Sunday, the first day of January, twelfth day of February, to be known as Lincoln day, twenty-second day of February, thirtieth day of May, fourth (day) of July, ninth day

of September, first Monday in September, twelfth day of October, to be known as "Columbus day," twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. Every Saturday from twelve o'clock noon until twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this state, and also in political divisions of it, where laws, ordinances or charters provide that public offices shall be closed on holidays; this shall not be construed to prevent or invalidate the issuance, filing, service, execution or recording of any legal process or written instrument whatever on such Saturday afternoons. Whenever any act of a secular nature (except a work of necessity or mercy), is appointed by law or contract to be performed upon a particular day—and that day falls upon a holiday, such act may be performed upon the next succeeding business day, with the same effect as if it had been performed upon the day appointed.

Holographic Will: See Wills.

Homestead: See Real Estate; Community Property; Husband and Wife. A homestead, up to the value of \$5,000, may be selected by (1) a husband, out of the community property, or out of his separate property, or out of his wife's separate property, with her consent; (2) by the wife, out of the community property, if the husband has not selected one, or out of her separate property; (3) by an unmarried person, who is the head of a family, selected from any of his or her property, up to the value of \$1000. A property is "homesteaded" by filing a written declaration to that effect in the office of the County Recorder of the county where the property is situated, stating the foregoing facts—and, from the time of its filing, the property is exempt from attachment or execution up to the amounts given—but not for any clouds which have arisen upon the property before the filing. If a deed stands in the name of both husband and wife, it cannot be homesteaded, nor unless the party actually lives there, nor if it consists of more than one house. But there is no limit to its size, as acreage, and may consist of several lots, if they join, and the house is upon one of them, with the rest vacant. If a person moves away from the property, this is not an abandonment, but a declaration of abandonment or a grant deed to the property, must be given and recorded.

Hour of Labor: (See Children) Every person shall be entitled to one day's rest in seven (except in cases of emergency); all laborers, workmen or mechanics employed upon any public works, eight hours in one calendar day. This was declared constitutional by the Supreme Court.

Twelve hours per day is the limit for drivers, conductors and gripmen.

No conductor, motorman, engineer, fireman, brakeman, train despatcher, or telegraph operator shall remain on duty for more than sixteen consecutive hours. No person despatching trains by telegraph or telephone shall work more than nine hours in each twenty-four; nor shall tower men work more than 13 hours in 24.

Every person employed by a municipal corporation, who works more than 120 hours in seven days, shall be allowed 3 hours off during each 24, for meal time; every person employed in a sawmill, shake mill, shingle mill, or logging camp, shall have at least one hour off for the midday meal.

On election day, every employee shall be allowed three hours off, in which to go to the polls to vote, and no deduction shall be made in his wages for such time off.

No woman shall work more than eight hours in any one day, or more than 48 hours in any week (except nurses or those engaged in harvesting, curing, canning or drying perishable fruits or vegetables. (See Minimum Wage Law.)

Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

Husband and Wife: See Succession; Women; Citizens; Sex; Real Estate; Homesteads.

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform to it. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. Either husband or wife may

enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts. A husband and wife can not, by any contract with each other, alter their legal relations, except (1) as to property, and except that (2) they may agree, in writing, to an immediate separation, and may (3) make provision for the support of (a) either of them and of (b) their children during such separation. The mutual consent of the parties is a sufficient consideration for such an agreement.

A husband and wife may hold property as joint tenants, tenants in common, or as community property. All property of the wife (1) owned by her before marriage, and that (2) acquired afterward by gift, bequest, devise, or descent, with (3) the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property. All property (1) owned by the husband before marriage, and that (2) acquired afterward by gift, bequest, devise, or descent, with (3) the rents, issues, and profits thereof, is his separate property. All other property acquired after marriage by either husband or wife, or both, including real property situated in this state, and personal property, wherever situated, acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this state, is community property; but wherever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property. And in case the conveyance is to such married woman and to her husband, or to her and any other person, the presumption is that the married woman takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument, and the presumption in this section mentioned is conclusive in favor of a purchaser or encumbrancer in good faith and for a valuable consideration. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman and recorded in the office of the recorder of the county in which the parties reside. The filing of the inventory in the re-

cordor's office is notice and prima facie evidence of the title of the wife.

The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage of it executed by the husband. The earnings of the wife are not liable for the debts of the husband. The (1) earnings and accumulations of the wife and (2) of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife. The separate property of the husband is not liable for the debts of the wife contracted before the marriage. The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that the separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessities of life furnished to them or either of them while they are living together; provided, that the provisions of the foregoing proviso shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise, succession, or gift, other than by gift from the husband, after marriage.

For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be liable for it, except in cases where he would be jointly liable with her if the marriage did not exist.

The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate; provided, however, that he can not make a gift of such community property, or dispose of the same without a valuable consideration, or sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community, without the written consent of the wife. The husband has the management and control of the community real property but the wife must join with him in executing any instrument by which such community real property or any interest in it, is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser or encumbrancer, in good faith without knowl-

edge of the marriage relation shall be presumed to be valid; but no action to avoid such instrument shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

If the husband neglect to make adequate provision for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value of it from the husband. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable from infirmity, to support himself. The property rights of husband and wife are governed by this article, unless there is a marriage settlement containing stipulations contrary to it.

Hydraulic Mining: See Mining Law.

Impost: See Tax; Toll. In its broader sense, is any tax or tribute imposed by authority, and applies as well to a tax on persons as to a tax on property.

Improvements: See Real Estate, ¶19.

Incumbrance: See Real Estate.

An Independent Contractor is one who, in rendering services, exercises an independent employer or occupation, and represents his employer only as to the results of his work, and not as to the means whereby it is to be accomplished. The chief consideration which determines one to be an independent contractor is the fact that the employer has no right of control as to the mode of doing the work contracted for. See Contracts.

Indorser: Indorsing an instrument, in its literal sense, means writing one's name on the back thereof; in its legal sense it means writing one's name at some place on it with intent to assume such liability as would be incurred by a person who warrants payment of the instrument provided it is first duly presented to the maker at

maturity, is not paid by him, and the fact of nonpayment is duly notified to the indorser. See *Negotiable Instruments*, ¶3103, 3105, 3111, 3112 to 3131 inclusive, 3144, 3145, 3146, 3148, 3149, 3151, 3161, 3170, 3196, 3201, 3205, 3212, 3223, 3235, 3228, 3231, 3232, 3233, 3239, 3265, 3265d; *Bill of Lading*, 2129f, 2129g, 2130.

Injunction: An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a judge of it; and when granted by a judge, it may be enforced as an order of the court. An injunction may be granted in the following cases: 1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually; 2. When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action; 3. When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual; 4. When pecuniary compensation would not afford adequate relief; 5. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief; 6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; 7. Where the obligation arises from a trust. Also to attach *Bill of Lading*, 2128i; *Warehouse Receipts*, 26.

An injunction cannot be granted: 1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings; 2. To stay proceedings in a court of the United States; 3. To stay proceedings in another state upon a judgment of a court of that state; 4. To prevent the execution of a public statute by officers of the law for the public benefit; 5. To prevent the breach of a contract other than a contract in writing for the rendition or furnishing of personal service from one to another where the minimum compensation for such service is at the rate of not less than six thousand dollars per annum, and where the promised service is of a special, unique, unusual, extraordinary

or intellectual character which gives it peculiar value the loss of which can not be reasonably or adequately compensated in damages in an action at law, the performance of which would not be specifically enforced; 6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession; 7. To prevent a legislative act by a municipal corporation.

Injunctions cannot be granted by a Justice of the Peace.

Inland Bill of Exchange: See Negotiable Instruments, ¶3210,

Inn: See Citizens; Liens.

INN is a public house of entertainment for all who chose to visit it. It is distinguished from a private boarding house, because the keeper of the latter is at liberty to choose his guests, while the innkeeper is obliged to entertain and furnish all travelers of good conduct and means of payment, with what they may have occasion for, as such travelers, while on their way.

If an innkeeper, hotel keeper, boarding-house or lodging-house keeper, keeps a fire-proof safe, and gives notice to a guest, boarder, or lodger, either personally or by putting up a printed notice in a prominent place in the office or the room occupied by the guest, boarder, or lodger, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed in it, he is not liable (except so far as his own acts shall contribute to it) for any loss or injury to such articles, if not deposited with him to be placed in it, nor in any case more than the sum of two hundred and fifty dollars for any or all such property of any individual guest, or boarder, or lodger, unless he shall have given a receipt in writing therefor to such a guest, boarder, or lodger.

Every keeper of a hotel, or inn, boarding or lodging house, shall post in [a] conspicuous place in the office or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charge or rate of charges by the day, and for meals or items furnished, and for lodging. No charges or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging house. For any violation of this section, or any of its provisions, the offender shall forfeit to the injured party

three times the amount of the sum charged in excess of what he is entitled to.

A GUEST is a person who is entertained at an inn transiently; while a boarder is one who remains with some degree of permanence, such as remaining by the month at a rate less than that by the day.

Any person who obtains any food or accommodation at an hotel, inn, restaurant, boarding house, lodging house, or furnished apartment house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding house, lodging house, or furnish apartment house by the use of any false pretense, or who, after obtaining credit, food, or accommodation at an hotel, inn, restaurant, boarding house, lodging house, or furnished apartment house absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodations is guilty of a misdemeanor.

Every hotelkeeper, lodging-house keeper, and innkeeper, or keeper of any place where rooms are let to lodgers in which, or any of which such places illuminating gas is used, who shall turn off, or cause to be turned off at the meter the flow of such illuminating gas, during the time of the use of any such room or rooms, shall be guilty of a misdemeanor; provided, that this act shall not apply to any of the persons herein enumerated, when such person or persons shall have connected every exit orifice upon the gas fixtures used in such place or places with a practical and safe automatic gas igniter.

Insolvent: See Assignment to Creditors; Bankruptcy; Stoppage in Transit.

Installment Sales: See Real Estate; Attachment.

Installment Contracts: During the last few years the greater part of the sale of real estate in California has been on installments—where the prospective purchaser would sign an agreement to buy on an easy payment plan, and the seller would agree to convey the title when these payments were finally completed. Such an agreement in the form usually made is a very dangerous thing for a purchaser to sign. He has no rights whatsoever in the property (except as will be discussed later) nor any equity such as he would have if he received a deed and gave back a mortgage for the unpaid balance.

Upon failure to pay any installment, the seller may at once sue for its recovery; but if the entire sum becomes due, he cannot demand payment of the price unless he first offers to deliver a deed.

Where "time is of the essence of the agreement," such agreement is broken each time any installment is not paid. This gives the seller the right to rescind the contract, which right he should assert immediately after the date of such non-payment. If he accepts payments long after they become due, it will be considered that he has waived his right to forfeit the contract and he cannot insist upon it until after the next due date. If the seller retakes the property before a default, the buyer may recover back the money which he has already paid in it.

A buyer agreed to purchase three lots on monthly installments without interest, "time being of the essence," and if payments were not made promptly "all formerly made were to be forfeited as liquidated damages without recourse at the option of the seller." Almost from the beginning the buyer fell behind in paying the installments, sometimes being a few days in arrears, and sometimes more than a month. The seller did not object when the payments were not made on time, but finally, ten months after the last payment date, cancelled the contract in writing. The buyer was entitled to recover back all the money which he had paid.

One may agree to sell property which he does not own, but yet be able when the time for performance arrives to furnish a good title. In the meantime the purchaser would not be at liberty to complain on the ground that the seller did not at that time have title. If the seller had title originally he might sell the property during the term of the contract, or mortgage it, and yet be able, when the final payment was made, to give the deed as he had agreed.

John Jones, who never had any title to a certain parcel of land, agreed in writing to sell it, and to deliver a good title to the purchaser, upon the payment of 35 promissory notes for \$10.00 each, payable monthly. Soon afterwards the buyer offered to pay the entire amount and demanded a deed. Jones refused to give the deed and the buyer refused to pay any more. Jones could not be compelled to make a deed until the expiration of the entire

35 months and the buyer was not entitled to recover back any of the money he had paid in.

The buyer must make the final payment before he can compel the deed to be delivered to him, unless the seller had offered to give him the deed if he would pay the entire balance either before or at the time it came due.

If the seller cannot deliver title when all installments have been promptly paid, the buyer may rescind the contract or offer to, or restore the possession of the property; in which case he may recover the purchase money advanced, together with the value of the improvements, but deducting the reasonable rental value of the premises for the time he had them; he cannot retain both the land and the purchase money until a perfect title is offered, but he must pay the purchase price and receive such title as the seller is able to give. He may also (a) bring an action to compel the seller to convey the property, or (b) sue the seller for damages. He cannot do both. In the first case he could recover prospective damages also; in the second case he could also recover such damages as were caused by the breach.

If the buyer in such a personal property contract does not pay promptly, the seller may do any one of the following three things: (1) Sue for each installment as it becomes due, thus keeping the contract alive from month to month; if a future installment comes due and is not paid, he may then proceed as under (2) and (3) in this paragraph; or, (2) declare the unpaid balance immediately due and payable, if the instrument so provides; or, if it does not so provide, wait until the entire amount is due to be paid, and then sue for the entire amount. It should be noted that this passes title at once to the buyer and an attachment should be at once issued, and the property attached for its purchase price. If this is not done, the buyer could transfer title to an innocent third party, and when the seller had obtained judgment, there might be no property to pay it. No property is exempt from execution or attachment for its purchase price. If, after judgment, and then an execution sale, the sum thus realized is too little to pay the amount of the claim, there will be a deficiency judgment which will be entered against the judgment debtor, and which can be collected out of other property he owns; or, (3) cancel the contract and take the property back, filing a claim and delivery suit if necessary.

The above rules apply only when the installment agreement is a so-called conditional sale, rather than a lease. Some concerns are using what has been decided by the courts to be a lease, and nothing more, but which has a clause to the effect that when the lease has expired and the buyer has complied with all its terms, he will then be given the right and option to purchase the property for an additional amount, usually a few dollars. But no title passes unless he exercises this option.

Every person who shall fraudulently remove, conceal or dispose of any goods, chattels or effects, leased or let to him by any instrument in writing, or any personal property or effects of another in his possession, under a contract or purchase not yet fulfilled, and any person in possession of such goods, chattels, or effects, knowing them to be subject to such lease or contract of purchase, who shall remove, conceal or dispose of the same with intent to injure or defraud the lessor or owner thereof, is guilty of embezzlement.

Insurance: See Bottomry.

INSURANCE is a contract whereby one undertakes to indemnify another against loss, damages, or liability, arising from an unknown or contingent event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for against any chance or ticket in a lottery drawing a prize. The most usual kinds of insurance are: 1. Marine insurance; 2. Fire insurance; 3. Life insurance; 4. Health insurance; and 5. Accident insurance. All kinds of insurance are subject to the provisions of this article.

The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured. Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents and others. Any one except a public enemy may be insured.

An insurable interest in property may consist in (1) An existing interest; (2) An inchoate interest founded on an existing interest; or (3) An expectancy, coupled with an existing interest in that out of which the expectancy arises. A carrier or depositary of any

kind has an insurable interest in a thing held by him as such, to the extent of its value. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable. The measure of an insurable interest in property is the extent to which the insured might be demnified by loss or injury of it. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others. A change of interest, by will or succession, on the death of the insured does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured. A transfer of interest by one of several partners, joint owners in common, who are jointly insured, to the others, does not void an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured. Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

CONCEALMENT is a neglect to communicate that which a party knows, and ought to communicate. Whether intentionel or unintentional, it entitles the injured party to rescind a contract of insurance. Each party to a contract of insurance must communicate to the other, in good faith, all the facts within his knowledge which are or which he believes to be material to the contract, and which

the other has not the means of ascertaining, and as to which he makes no warranty. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other: 1. Those which the other knows; 2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant; 3. Those of which the other waives communication; 4. Those which relate to a risk excepted from the policy, and which are not otherwise material.

Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

REPRESENTATION may be oral or written, or made at the same time with issuing the policy, or before it. Its language is to be interpreted by the same rules as the language of contracts in general. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation. It cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty, and may be altered or withdrawn before the insurance is effected, but not afterward. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others; or he may submit the information, in its whole extent to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insurer, whose duty it is to give the intelligence. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. If it is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. The materiality of a representation is determined by the same rule as the materiality of a concealment, to a modification of a contract of insurance as to its original formation. Wherever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

A POLICY is the written instrument, in which a contract of insurance is set forth. It must specify: 1. The parties between whom the contract is made; 2. The rate of premium; 3. The property or life insured; 4. The interest of the insured in property insured, if he is not the absolute owner of it; 5. The risks insured against; and, 6. The period during which the insured is to continue

When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. A policy may be so framed that it will inure to the benefit of whomsoever may become the owner of the interest insured during the continuance of the risk. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person

becomes the owner of both the policy and the thing insured. A policy is either open or valued. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum. A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation in it that it shall not be binding until the premium is actually paid. An agreement made before a loss, not to transfer the claim of a person insured, after the loss has happened, is void.

WARRANTY is either express or implied, and no particular form of words is necessary to create it. If made at or before the execution of a policy, it must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it. It may relate to the past, the present, or to any or all of those. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty of it. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy. The violation of a material warranty, or other material provisions of a policy, on the part of either party to it, entitles the other to rescind. A policy may declare that a violation of specified provisions thereof shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

RETURN PREMIUM: An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. A person insured is entitled to a return of premium, as

follows: 1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against. 2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

OVER INSURANCE. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

LIABILITY OF INSURER. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, in whole or in part, or where a loss is caused by efforts to rescue the thing insured from a peril insured against. Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted. An insurer is not liable for a loss

caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

In case of loss upon an insurance against fire; an insurer is exonerated, if notice of it be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay. No conditions, stipulations or agreements contained in any application for insurance in any foreign or domestic casualty or accident insurance company, or contained in any policy issued by any such company, or in any way made by any such company, limiting the time within which notice of the accident or injury, or death, shall be given to such company to a period of less than twenty days after the happening of the accident, or injury, or death, shall be valid. Said notice may be given to the company insuring, at any time within twenty days after the happening of the accident, or injury, or death and shall be valid and binding on the company. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection are waived. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

REINSURANCE: A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk. A reinsurance is presumed to be a contract of

indemnity against liability, and not merely against damage. The original insured has no interest in a contract of reinsurance.

MARINE INSURANCE.

Marine Insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. The interest mentioned in the last section exists, in the case of a charter-party, when the ship has broken ground on the chartered voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits. The charterer of a ship has an interest in it, to the extent that he is liable to be damnified by its loss.

A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a previous loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication. A concealment in a marine insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed. The national character of the insured; 2. The liability of the thing insured to capture and detention; 3. The liability to seizure from breach of foreign trade; 4. The want of necessary documents; and 5. The use of false and simulated papers. If a representation by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. The eventual falsity of a repre-

sentation as to expectation does not, in absence of fraud, avoid a contract of insurance.

WARRANTY of Seaworthiness. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases: 1. When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and, 2. When the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transhipped, be seaworthy at the commencement of its particular voyage. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables, and anchors, cordage and sails, food, water, fuel, and lights, and other necessary and proper stores and implements for the voyage. Where different portions of the voyage contemplated by a policy different in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with reference to that portion. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom. A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion on it.

DEVIATION: When a voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. A deviation is proper: 1. When caused by circumstances over which neither the master nor the owner of the ship has any control; 2. When necessary to comply with a warranty, or to avoid a peril whether insured against or not; 3. When made in good faith; and upon a reasonable ground of belief in its necessity to avoid a peril; or, 4. When made in good faith, for the purpose of saving human life or relieving another vessel in distress. Every deviation not specified in the last section is improper. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

LOSS: A loss may be either total or partial. Every loss which is not total is partial. A total loss may be either actual or constructive. An actual total loss is caused by: (1) A total destruction of the thing insured; (2) The loss of the thing by sinking, or by being broken up; (3) Any damage to the thing which renders it valueless to the owner for the purpose for which he held it, or (4) Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured. A constructive total loss is one which gives to a person insured a right to abandon, as a ship. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise the presumption depends on the circumstances of the case.

When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer on it continues after they are thus reshipped. In addition to the liability mentioned in the last section a marine insurer is bound for damages, expenses of discharging,

storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured. Upon an actual total loss, a person insured is entitled to payment without notice of abandonment. Where it has been agreed that an insurance upon a particular thing, or a class of things, shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured. An insurance is confined in terms to an actual total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

ABANDONMENT is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof when the cause of the loss is a peril insured against: 1. If more than half in value of it is actually lost, or would have to be expended to recover it from the peril. 2. If it is injured to such an extent as to reduce its value more than one-half; 3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or, 4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expenses or risk. But freightage can not in any case be abandoned, unless the ship is also abandoned.

An ABANDONMENT must be neither partial nor conditional. An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion. Where the information upon which an abandonment has been made

proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual. Abandonment is made by giving notice of it to the insurer, which may be done orally, or in writing. A notice of abandonment must be explicit, and must specify the particular cause of abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss. An abandonment can be sustained only upon the cause specified in the notice of it, and is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer of it; but freightage subsequently earned belongs to the insurer of the ship. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. If a person omits to abandon he may nevertheless recover his actual loss.

A valuation in a policy of marine insurance is conclusive between the parties to it in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. A marine insurer is liable upon a partial loss,

only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

In estimating a loss under an open policy of marine insurance the following rules are to be observed: 1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured; 2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost can not be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival; 3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and, 4. The cost of insurance is in each case to be added to the value thus estimated. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at the port, of the thing so damaged, bears to the market price it would have brought if sound.

A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred by it, such expense, in either case, being in addition to a total loss, if that afterward occurs.

A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him toward a general average loss called for by a peril

insured against. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. In the case of a partial loss of a ship or its equipments, the old materials are to be applied toward payment for the new, and whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing-metal at a depreciation of only two and one-half per cent. for each month that it has been fastened to the ship.

LIFE INSURANCE may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life. Every person has an insurable interest in life and health: 1. Of himself; 2. Of any person on whom he depends wholly or in part for education or support; 3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, or which death or illness might delay or prevent the performance; and, 4. Of any person upon whose life any estate or interest vested in him depends. A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he is insurable or not, and such person may recover upon it whatever the insured might have recovered. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of policy of insurance upon life or health, unless expressly required by it. Unless the interest of a person insured is susceptible of exact measurement in money, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. The beneficiary under a policy of life insurance, (providing for the payment of the proceeds thereof in periodical installments), may be restrained by a condition or stipulation in the policy from disposing of or encumbering his interest in any such installment, before the date when it shall become due and payable by the insurer.

Insurance Agents: See Agency; Insurance. All persons doing

business as insurance agents must be licensed to do so, according to a law enacted in 1919.

Inventions: The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership in it, and in the representation or expression of it, which continues so long as the product and the representation or expression of it made by him remains in his possession. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows: 1. If the product is single, in equal proportions. 2. If it is not single, in proportion to the contribution of each. The owner of any product of the mind, or of any representation or expression of it, may transfer his property in it. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right in it as the previous author, which is exclusive to the same extent against all persons except the former author, or those claiming under him. Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

I. O. U.: See Statute of Limitations.

Interest: See Bottomry, ¶4; Negotiable Instruments, ¶3083, 3098; Actions; Accord and Satisfaction.

Interest is the compensation allowed by law or fixed by the parties, for the use of, or forbearance or detention of money (in cases where people refuse or neglect to pay money which they lawfully owe—as overdue business accounts, judgments, protested bills of exchange, payments in settlement of an estate, etc.). Judgments in this state carry 7%, which cannot be compounded.

Unless it is expressly stated in writing in a contract or other written instrument what rate of interest is to be charged, interest is payable on all moneys after they become due at the rate of seven per cent per annum, but different states have differing rates, and the laws where the contract was made will govern the rate to be

paid—unless it is expressly stated in the instrument that the principal and interest is to be paid in another state. Where the rate is prescribed by law or contract, without specifying the period of time by which it is to be calculated, it is to be deemed an annual rate. Where no contract exists, interest at the rate of 7% per annum may be charged on accounts from the day when the balance is ascertained, and the creditor can collect up to 12% per annum on overdue accounts if so printed on his billheads or statements. Where any contract for the payment of money does not provide for the payment of interest, legal interest is payable on the amount from the time it becomes due under the contract.

When a creditor accepts payment of the principal, and neglects to collect the interest at the same time, he waives his right to interest, and cannot maintain a separate action for it.

In any contract in writing, by which any debt is secured, the parties may agree that if the interest is not punctually paid when due, it shall become a part of the principal, and afterwards bear the same rate of interest as the principal. Compound interest—yearly, half yearly, quarterly, or monthly—is allowed, but only when provided for in the contract.

The rule for computing interest when partial payments have been made is to apply payment in first place to discharge of interest then due; if payment exceeds interest, surplus goes toward discharging principal, and subsequent interest is to be computed on balance of principal remaining; if payment be less than interest, surplus, of interest must not be taken to augment principal, but interest continues on former principal, until period when payments taken together exceed interest then due.

Interest is not allowed where the demand is based upon the reasonable value, or where an accounting is necessary. It will be allowed where the amount involved is a definite one—or one which can be readily computed, or where the party is able to know how much he owes; or for the use of money, past due; or for the wrongful withholding of such money.

The legal rate of interest is seven per cent. per annum. Formerly persons could agree to pay any rate they pleased (except that personal property brokers could only charge two per cent. per month, if they made a business of loaning money on chattel mortgages or assignments of salaries). In 1918 a law was submitted

to the voters of the State, and went into effect December 18, 1918. It forbids any person to charge more than 1 per cent. per month—except that he may pay for certain expenses connected with making the loan.

The United States Supreme Court has recently decided that National Banks may charge a greater rate of interest than allowed by the laws of the State in which it operates.

Investment means putting money out on interest in some form more or less permanent so as to yield an income.

Irrigation: See Easement, in Real Estate, ¶13; Water Laws.

Investment Companies Act: See Blue Sky Law.

Islands: See Real Estate, ¶22.

Itinerant Vendors: See Peddlers.

Jettison: See Carriers; Ships. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice any or all of the cargo or appurtenances of the ship. To throw property overboard for such purpose is called jettison, and the loss incurred by it is called a general average loss. A jettison must begin with the most bulky and least valuable articles, so far as possible. A jettison can be made only by authority of the master of the ship, except in case of his disability, or of any overruling necessity, when it may be made by any other person. The loss incurred by a jettison, when lawfully made, is borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed. The proportion in which general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the freightage at one-half the amount due on delivery, and the cargo as at the time and place of

its discharge; adding, in each case, the amount made good by contribution. These rules concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship (or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils).

Judgment: See Actions; Court.

Judgment, Confession of: See Negotiable Instruments, ¶3086; Liens; Actions.

A judgment is the decision of the Court or the verdict of the jury. After it is rendered, the Clerk of the Court will issue an execution. A judgment in the Superior Court of a county creates a lien against all the real property of the defendant in that county (see Liens); but a Justice Court judgment is not a lien unless an abstract of it is recorded.

All judgments can be renewed by filing an action upon them at any time before they expire—the five year period. Judgments are assignable, and no consideration need be shown.

If the defendant does not appear within the time designated in the complaint (see Actions), his default will be entered upon application to the Clerk of the Court, and a judgment will thereafter be entered against him for the amount asked for in the complaint, if the action is one based upon contract or for damages merely. If the action is one in which the taking of proof is necessary, the Judge will consider the matter at any convenient time, without notice to the defendant. There is no appeal from default judgment in the Justice Court. The only remedy is to make an application to set the judgment aside, because of mistake, surprise or unavoidable neglect on the part of the defendant or his attorney. In the Justices' Court this application must be made and must be heard within ten days after the defendant has notice or knowledge of the entry of judgment. In the Superior Court it cannot be made after six months after the entry of judgment.

DEFICIENCY JUDGMENT: If the amount received from the sale of any property under execution to satisfy a judgment, is not enough to pay the entire judgment, with costs and accrued expenses, the balance thus unpaid may be entered up as another judgment against the judgment debtor. This is called a deficiency judgment, and has the same effect as the original judgment, except as to amount.

Jury Trial is a right which can only be claimed in actions at law, or criminal actions, where an issue of fact is made by the pleadings. It can not be claimed in equity cases, unless such issue be specially framed for the jury under the direction of the judge. It can not be asserted upon an issue of law—for that is purely a matter for the judge to decide. There must be an action at law—as distinguished from a suit in equity, and from a special proceeding, or a criminal action—and an issue of fact joined in the pleadings in such action at law, before a jury trial can be claimed as a constitutional right. (See Actions.)

Landlord and Tenant: See Unlawful Detainer; Forcible entry and detainer; Real Estate; Crops; Hiring. Landlord and Tenant may be created in one of two ways; either verbally or in writing. If written, the instrument is called a lease. If verbal, it may be called either a lease, a tenancy at will, or a tenancy at sufferance.

A tenancy at will is when the tenant has no lease, but must expect to remove from the premises upon receiving the customary statutory notice—as will be explained later in this article.

A tenancy at sufferance is created when a person takes possession of or occupies land or real property, with the knowledge of the owner, but without his consent. The owner can remove such tenant at any time.

To constitute a lease, there is no particular form of words necessary. As long as it shows an intention (1) on the part of the one who leases to dispossess himself of the premises, and on the part of the one leasing—to enter and hold himself subject to the other (2) the contracting parties (3) a description of the premises (4) the rent to be paid and (5) the term—it is sufficient. Other conditions are nonessential. Even the signature of both parties need not be given, if it is signed by the lessor, and possession taken by the other.

Verbal leases may be made for a year, but no longer—although if, after the expiration of any lease, the tenant continues in possession, and pays the same rent, either by consent of the landlord, or without protest from him—it is considered that the lease has been thus automatically renewed for the same term, at the same rate. But a verbal agreement to make a lease for one year to begin in the future, is void. If an agent makes a lease, he must have authority to do so. If for less than a year, it may be verbal; but must be written, if the lease made by him is for a longer term. A minor

under the age of eighteen cannot make a lease; and his contract is voidable, if made while over 18, but under 21.

No alien may lease lands in this state for agricultural purposes for a term of more than three years, unless he is eligible to citizenship; nor may any company, association or corporation organized under any laws, in which a majority of the members are such aliens (or in which a majority of the issued capital stock is owned by such aliens), lease such lands for any longer term. No lease of land for agricultural or horticultural purposes shall be valid for a longer period than 15 years; no lease of a town or city lot is valid for a period of more than 99 years; no property belonging to a municipality, or a minor, or incompetent, may be leased for more than 15 years.

DEPOSIT FOR RENT: Provision is sometimes made in a lease for the payment in advance of the rents of the last or later periods of the lease, and such a provision is not a security for the lessee's performance of the agreements in the lease—but is merely a payment of rent in advance. It may be retained by the landlord, even though he terminates the lease for some fault on the part of the lessee. If the money was paid by the lessee as a bonus—as an independent consideration to induce the landlord to make the lease—a cancellation of the lease by the landlord would not permit the lessee to recover his money back, unless such cancellation was not his own fault. If the money was deposited as security for the payments of the rent by the lessee, then upon the termination of the lease, he would be entitled to a return of the sum deposited, less the amount due and unpaid at the time of such termination.

TERM: Unless there is a local custom to the contrary, or unless there is a different agreement to the contrary—real property is presumed to be hired for one year—except lodgings and dwelling houses, or any other property which is to be used simply for residence purposes. Dwelling houses and lodgings are presumed to be taken for such length of time as the parties adopt for the payment of the rent (unless there is some agreement to the contrary; that is, if paid by the week, the term is supposed to be one week; if by the month, then for one month, etc. Rent is payable at the expiration of the term of hiring, that is, at the end of the week, month, quarter, or year, for which the premises are presumed to be hired—unless of course there is some agreement to the contrary. The

landlord can demand his rent in advance, if the agreement is to this effect—but not otherwise.

CHANGE OF TERMS: The landlord may change the terms of the lease, when the term is from month to month, by raising the amount, or the time of payment, or the space to be occupied. To do this, he must give notice to the tenant, not less than 30 days before the next rent day, stating what the new terms are to be, and if the tenant remains in possession after that time, he is presumed to have accepted these new terms; it thus becomes a new contract between the tenant and the landlord. See Account Stated.

When the rent is not paid when agreed, the landlord may do one of two things; he may declare the lease forfeited and begin an action to oust the tenant; or, he may bring an action to collect the rent unpaid, and also permit the tenant to remain in the premises. But the landlord could not recover the rent for the entire unexpired term in the future—even though the tenant told him he would not pay any more rent, nor move out. If the tenant abandons the premises without cause, the landlord may do one of three things; he may permit the premises to remain vacant, and sue the tenant for the rent which he agreed to pay; or, he may try his best to rent the premises, and if he can do so, he credits the tenant with the amount of the rent thus obtained, and may sue him for the balance, if there is any; or, he may cancel the lease altogether. But the landlord cannot do but one of the three. Any tenant is presumed to have rented premises indefinitely, unless there is some agreement to the contrary. That is, if the time of paying is by the week, or month, it is presumed that the tenant will continue in possession until he gives notice to his landlord. This notice must be at least the same as the landlord must give the tenant, and if the tenant moves without giving such notice, he is still liable for the rent. In order to remove a tenant at will from premises, it is necessary to serve upon him a thirty days notice, and then a three day notice after that, and then file an action in unlawful detainer (which see). In case of a lease, the rent of which has not been paid, the three day notice is all that is necessary.

If a tenant uses the property for immoral purposes, or in such a manner as to be injurious to it, or to be a nuisance to the neighborhood—probably no notice at all is necessary. To proceed legally, an action in ejectment should be filed, but it is more customary to liter-

ally throw the tenant's possessions out onto the sidewalk. The tenant could then file an action in eviction against the landlord, but the defense of waste would probably be a good defense.

If a lessee of real property remains in possession of it after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year. A hiring of real property, for the term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate it, at least as long before the expiration of it as the term of the hiring itself, not exceeding one month. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due. The term of a lease is not modified by checks given to the landlord from time to time, in a sum less than the monthly rent, when there is no other agreement between the parties as to any decrease in the amount of rent.

A **LODGER** is one who occupies a room or portion of a building, which is under the control or in the occupancy of another. He has no interest in real estate, as has one who has possession under a lease. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligations to pay rent to him while such double letting of any room continues. ,

REPAIRS: When the premises are in good repair at the time they are let, the tenant in possession, is bound to keep them in repair—unless there is an agreement to the contrary. But the owner is liable, under the following circumstances and exceptions (1) if the lease is one under which the landlord, and not the tenant, is required to keep the premises in repair; (2) if the dangerous and defective condition by which the injury was occasioned existed at

the time the premises were leased; (3) if that which occasioned the injury was in its nature a nuisance and was upon the premises when the lease was executed. The above is the rule as to premises other than dwellings; as to these, a different rule applies. The lessor of a building intended for the occupation of human beings, must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations of it, which render it untenable, except in those occasions by his want of ordinary care. If within a reasonable time after the notice to the landlord of dilapidations which he ought to repair, he neglects to do so, the tenant may repair the same himself (where the cost of such repairs do not require an expenditure greater than one month's rent of the premises), and deduct the expenses of such repairs from the rent, or he may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

ASSIGNMENTS: Unless there is provision to the contrary in a lease, it may be assigned by the lessee, but such provisions are not favored in law. The usual clause is to the effect that an assignment shall not be made of the term or any portion of it without the written consent of the landlord. This is to protect him so that he shall be satisfied with the new tenant; subleasing is of a portion of the premises. If the landlord accepts the new tenant under such assignment, this does not release the former tenant from his liability—unless so agreed; and it is seldom so agreed. Sometimes a new tenant takes over the property and pays the rent, without the consent in writing of the landlord; this binds the new tenant to continue to pay the rent to the end of the term, but does not bind the landlord to recognize his rights, unless the landlord knew of his tenancy and accepted it.

Larceny is the felonious stealing, taking, carrying, leading or driving away the personal property of another. **Embezzlement** is fraudulent appropriation of property by a person to whom it has been intrusted.

The difference between the crimes is this: In larceny the person taking or driving away the property of another must have had the intent to steal such property at the time he takes it or drives it away. In embezzlement, there must be no intent to steal at the time the person takes or drives away the property of another; but

he must have come into possession of such property lawfully, and have formed the intent to fraudulently convert the property to his own use afterwards. When a person intends to steal from the beginning, and does steal, the crime is larceny. (See Real Estate; Conversion; Embezzlement; Mortgages.)

Grand larceny is larceny committed in the following cases:

1. When the property taken is of a value exceeding fifty dollars.
2. When the property is taken from the person of another.
3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack jenny, sheep, or lamb.

Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and upon conviction of it, shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and, upon conviction of it, shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Law Merchant: See Negotiable Instruments, ¶3266d; Bill of

Law Suit: See Action.

Lawyers: See Liens; Costs; Attachment.

An ATTORNEY must be held to undertake to use a reasonable degree of care and skill, and to possess to a reasonable extent the knowledge requisite to a proper performance of the duties of his profession. If injury results to the client as a proximate consequence of the want of such knowledge or skill, or from the failure to exercise such care, the attorney must pay damages to the extent of the injury sustained by his client. The attorney is not liable, however, for every mistake which may occur in practice. If he is fully capacitated to discharge the duties ordinarily incumbent upon one of his profession, and acts with a proper degree of attention, and to the best of his skill and knowledge and with reasonable

care, he will not be responsible for a mere error of judgment when he consults his client, and the latter (after being informed of the legal status of the case), approves the course which the attorney proposes to pursue. Attorney's fees must be paid by the one who employs him, except in some few cases where the law provides that the losing party must pay them (and where they are agreed to be paid by the loser, as when so agreed in a note, or mortgage); such fees are given in Divorce, as Alimony, to the wife; for defense of Injunction; in Eminent Domain, even if abandoned; in action for wages. But they are not awarded in the following cases: Labor; Mechanics' Liens; Conversion; Insolvency; Claim and Delivery. In cases of foreclosure of Mortgages, the Court who tries the matter fixes the fee, no matter what may have been the agreement in the mortgage itself. (See Negotiable Instruments, ¶3083; Bill of Lading, 2128a.

Letters, Property Right in: See Inventions.

Lessee: The one who leases from the owner of property.

Lessor: The one who leases to the other—as an owner of real estate, or a tenant leasing to a subtenant. See Landlord and Tenant.

Letter of Credit is a written instrument, addressed by one person to another, requesting the latter to give credit to that person in whose favor it is drawn. It is either general or special, and may be addressed to several persons in succession. When the request for credit is addressed to specified persons by name or description, the letter is special; and all other letters of credit are general, and several persons may successively give credit upon it. The writer of such a letter is liable for credit given upon it without notice to him—unless the terms express or imply the necessity for giving notice. If the debtor in the letter does not pay—the writer is liable to those who gave credit in compliance with its terms. A general letter of credit gives any person to whom it may be shown the authority to comply with its request, and when he does so it then becomes the same as if it were addressed to him by name.

Libel: See Slander.

Lien: See the various subtitles in their alphabetical order in the book. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act. Liens are either general or special: A general lien is one which the holder of is entitled to enforce as a security for the performance of all the obliga-

tions—or of a particular class of obligations—which exist in his favor against the owner of the property. A special lien is one which the holder can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental to it. If, for his own protection, the holder of a special lien has to pay a lien made before his—he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Liens are created in one of two ways; either by contract of the parties (such as a mortgage on real or personal property), or by operation of law (such as those when labor is performed or material furnished in making or repairing real or personal property). A person who holds property because of a lien upon it, is not entitled to be paid by the owner of the property for any trouble or expense which he incurs about the property—except as in the case of a borrower (which see). No lien arises by mere operation of law, until the time at which the act secured by it ought to be performed.

An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence (as of a house to be built); in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the property—to the extent of such interest. A lien may be created by contract to take immediate effect, as security for the performance of obligations then not in existence (such as a lien upon an unplanted crop, for money to be advanced to plant such crop). Even though there is a contract to the contrary, the law will not permit a person to transfer title to property subject to such lien, by the act of making it subject to such lien. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured by such lien, are void, as are also all contracts in restraint of the right of redemption from such lien.

The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation—except the one which was originally secured by the lien. One who has a lien upon property may pledge it to the extent of his lien. See Pledge. When liens are imposed on property by public authority for a public purpose

(such as street or other improvement liens), the last one imposed is paramount. A Lien dependent upon possession is not considered lost if the debtor obtains possession by some trickery.

ARCHITECT'S LIEN: An architect has a lien upon the plans in his possession for the agreed price or reasonable value of making them.

ATTACHMENT LIEN on real estate lasts for three years, and may be renewed for two years more, by order of Court; on personal property, there seems to be no limit.

An **ATTORNEY** has no lien for his fees upon a judgment rendered in favor of his client, but probably has for money belonging to his client in his hands, and certainly has for papers in his possession belonging to his client. See Attorney at Law; Costs.

AUTOMOBILE MAN'S LIEN: See Personal Property Lien.

BANKER'S LIEN: A banker has a lien upon all property or money (in his hands), belonging to a customer, for the balance due to him from such customer in the course of business.

A **BOTTOMRY LIEN**, if created out of real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing—except a lien for seamen's wages, and a subsequent lien of material men for supplies or repairs indispensable to the safety of the ship, and to a subsequent lien for salvage. See Salvage. Of two or more bottomry liens on the same property, the latter in date has preference, if created out of necessity. A bottomry lien is independent of possession, but is lost by failure to enforce it within a reasonable time. See Reasonable Time; Seaman; Ships.

A **CARRIER** has a lien for freightage and for services rendered at request of shipper or consignee in and about the transportation, care and preservation of the property, and he also has a lien for money advanced at request of shipper or consignee to discharge a prior lien. See Bill of Lading, 2127, 2128j.)

CONSTABLE'S LIEN: See Sheriff's Lien.

CORPORATION LIEN: A corporation for profit has a lien upon each share of its subscribed capital stock, independent of the possession of the certificate of it, to secure the payment of any valid assessment which may be levied on such shares. This is a lien valid against all persons—but the corporation must transfer such shares

upon its books, upon demand by a subsequent purchaser of these shares. See Conversion.

CROPS: The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as it remains on the land of the mortgagor.

A **FACTOR** has a general lien, dependent upon possession, for all that is due to him as such, upon all articles of commercial value which are entrusted to him by the same principal.

FENCE LIEN: Except in Colusa, Glenn, Placer, Riverside, San Bernardino, San Diego, San Mateo, Shasta, Siskiyou, and Trinity counties—and also in Liberty, Klamath Townships and Hoppa Valley Reservation in Humboldt County—if the owner of a parcel of land makes use of a fence upon one side of his land so that such fence helps to enclose his land, and if such portion of the fence had been formerly erected by some one else—the person who so uses it must pay the owner of the fence one-half of that portion which makes the partition between their lands.

2. In Amador, Butte, Contra Costa, El Dorado, Kings, Nevada, Sacramento, San Luis Obispo, Santa Barbara, Solano, Sutter, Tulare, Ventura, Yolo Counties, and that part of San Joaquin county north and east of the San Joaquin river, this value is determined by agreement of the parties, or the judgment of fence viewers. This amount, with interest at 15 per cent. per annum, is a lien upon the property enclosed. In all other counties first in this paragraph named, the value is the amount with lawful interest, to which the one who built the fence is entitled.

3. In all the counties in the state (except those first named in the preceding paragraph), if it becomes necessary that a partition fence should be made between adjoining lands enclosed by one fence—then the other party, when notified, must erect one-half such fence as near as practicable on the division line.

4. After notice in writing (or after a determination of the viewers), either party shall fail to proceed to erect—or cause to be erected and completed, within six months' time afterward—one-half of such fence—then the party giving the notice may erect the entire fence, and collect by law one-half of the cost of it from the other party. This rule applies only in the second set of counties described in paragraph 2 of this article. This demand, with interest

at 15 per cent. per annum is a lien claim against the land thus partitioned.

5. The lien claimant must file a lien the same as a mechanic's lien (which see), and upon doing so, the lien is perfected and becomes enforceable. One may have a lien in this manner, and also file an action at law to recover the amount determined.

FINDERS' LIEN: If the thing found is such as commonly the object of sale, the finder may sell it (when the owner cannot be found with reasonable diligence); or, if the owner is found and refuses to pay the lawful demands of the finder—in one of the two following ways: (1) If the thing is in danger of perishing, or of losing the greater part of its value; (2) when the lawful charges of the finder amount to two-thirds of the value. The sale must be conducted as that of a pledged article. See Pledges.

FUMIGATION LIEN must be served personally upon the owner, if he is to be found; but service upon the person occupying the premises is sufficient, if the owner is not in this country.

GARAGE MAN'S LIEN: See Personal Property Lien.

GRAZING LIEN: In Plumas, Lassen and Modoc counties any person who shall permit his live stock to graze or herd upon the lands of another without permission of the owner first being obtained, shall be liable for all damages which such live stock shall then do, with costs of suit; and the live stock may be seized and held by a writ of attachment as security for the payment of any judgment recovered in such action; and the claim and lien of any such judgment or attachment shall be superior to any other claim or demand which arose after the commencement of such action.

HOTEL, inn, boarding-house, lodging-house and furnished apartment house keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, or boarders, or lodgers, which may be in such hotel, inn, or boarding or lodging-house for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging and room rent, and such extras as are furnished at their request (and for all money paid for or advanced to such guests, or boarders or lodgers, and for the costs of enforcing such lien), with the right to the possession of such baggage and other property until such charges and moneys are paid; and unless such charges and moneys shall be paid within sixty days from the time when the same became

due, said hotel, inn, boarding-house or lodging-house keeper may sell said baggage and property at a public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, once every week for four successive weeks prior to the day of the sale, in a newspaper of general circulation in the county in which said hotel, inn, boarding-house or lodging-house is situated and also by mailing, at least 15 days before such sale, a copy of such notice addressed to such guest, boarder or lodger at his postoffice address, if known, and if not known, such notice shall be addressed to such guest, boarder or lodger at the place where such hotel, inn, boarding-house or lodging-house is situated; and after satisfying such lien out of the proceeds of such sale, together with either any reasonable costs that may have incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall upon demand made within six months after such sale, be paid by said hotel, inn, boarding-house or lodging-house keeper to such guest, boarder or lodger; and if not demanded within six months from the date of such sale, such residue shall be paid into the treasury of the county in which the sale took place; and if the same be not claimed by the owner thereof, or his legal representative, within one year thereafter, the same shall be paid into the the general fund of said county; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding-house or lodging-house keeper for the recovery of such baggage or property or of the value thereof, or for any damages growing out of the failure of such guest, boarder or lodger to receive such baggage or property; provided, however, that if any baggage or property becoming subject to the lien herein provided for does not belong to the guest, lodger or boarder who incurred the charges or indebtedness secured thereby, at the time when such charges or indebtedness was incurred, and if the hotel, inn, boarding-house or lodging-house keeper entitled to such lien receives notice of such fact at any time before the sale of such baggage or property hereunder, then, and in that event, such baggage or property which is subject to said lien and did not belong to said guest, boarder, or lodger at the time when such charges or indebtedness was incurred shall not be subject to sale in the manner hereinbefore provided, but such baggage and property may be sold in the manner provided by the code.

Whenever any trunk, carpet-bag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come into possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained or shall remain unclaimed for the period of six months, such a keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale of it; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village or place in which said hotel, inn, boarding or lodging house is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet-bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known, the name of such keeper, and the time and place of sale, and the expenses incurred for advertising shall be a lien upon such trunk, carpet-bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which the sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

INHERITANCE TAX is a lien upon the property passed or transferred until paid, provided that unless such taxes are sued for within five years after they are due and legally demanded, they cease to be a lien against any bona fide purchaser of the property. See Inheritance Tax; Taxes; Real Estate; Lien of Attachments and Judgments.

A Superior Court JUDGMENT becomes a lien—automatically upon the recordation thereof—on all of the real property of the judgment debtor not exempt from execution, owned by him in the county at the time or afterward acquired—during a period of five years; but is not a lien upon a judgment obtained for breach of a lease, unless a levy is made upon the property. A judgment rendered in the justices' court does not become a lien unless an abstract of it is first filed in the office of the County Recorder in

the county where the land is situated; this lien continues for only two years—unless renewed—and may not continue for longer than five years, unless the judgment is renewed. The transcript of the original docket of any judgment, the enforcement of which has not been stayed on appeal, certified by the clerk, may be filed with the recorder of any other county, and from such filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterward acquire before the lien expires.

A JUDGMENT that a defendant may pay a fine with or without the alternative of imprisonment constitutes a lien in like manner as a judgment for money rendered in a civil action. If there are several judgments against the same person, the one levied upon his property first, has the first right.

LAUNDRY proprietors have a lien upon all property in their possession, belonging to a customer, for all charges due them from such customer for laundry work. See Personal Property Lien.

The MASTER of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

MECHANICS' LIENS:

1183. Mechanics, material men, contractors, sub-contractors, artisans, architects, machinists, builders, miners, teamsters and draymen, and all persons and laborers of every class performing labor upon, or bestowing skill or other necessary services, or furnishing materials to be used or consumed in, or furnishing appliances, teams and power contributing to the construction, alteration, addition to or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of the use of such appliances, teams and power, whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise. And every contractor, sub-contractor, architect, builder or other person having charge of the construction, alteration, addition to or repair, either in whole or in part, of any building or other improvement as aforesaid shall be held to be the agent of the owner for the purposes of

this chapter. Any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process, or furnishes materials to be used or consumed therein, has a lien upon the same and the works owned and used by the owners for the milling or reducing the ores from the same, for the value of the work or labor done, or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claim or claims or real property worked as a mine, or his agent. And every contractor, sub-contractor, superintendent or other person having charge of any mining work or labor performed in and about such mining claim or claims or real property worked as a mine, either as lessee or under a working bond or contract thereon, shall be held to be the agent of the owner for the purposes of this chapter.

The liens in this chapter provided for shall be direct liens and shall not in the case of any claimants, other than the contractor, be limited, as to amount, by any contract price agreed upon between the contractor and the owner, except as hereinafter provided; but said several liens shall not in any case exceed in amount the reasonable value of the labor done or material furnished, or both, for which the lien is claimed, nor the price agreed upon for the same between the claimant and the person by whom he was employed. Nor in any case where the claimant was employed by a contractor, or sub-contractor, shall the lien extend to any labor or materials not embraced within or covered by the original contract between the contractor and the owner, or any modification thereof made by or with the consent of such owner, and of which such contract, or modification thereof, the claimant shall have had actual notice before the performance of such labor or the furnishing of such materials. The filing of such original contract, or modification thereof, in the office of the county recorder of the county where the property is situated, before the commencement of the work, shall be equivalent to the giving of such actual notice by the owner to all persons performing work or furnishing materials thereunder. In case said original contract shall, before the work is commenced, be so filed, together with a bond of the contractor with good and sufficient sureties in an amount not less than fifty (50) per cent. of the contract price named in said contract, which bond shall, in addition to any condi-

tions for the performance of the contract, be also conditioned for the payment in full of the claims of all persons furnishing labor upon or furnish materials to be used in such work, and shall also by its terms be made to inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in the work described in said contract so as to give such persons a right of action to recover upon said bond in any suit brought to foreclose the liens provided for in this chapter, or in a separate suit brought on said bond, then the court must, where it would be equitable so to do, restrict the recovery under such liens to an aggregate amount equal to the amount found to be due from the owner to the contractor, and render judgment against the contractor and his sureties on said bond for any deficiency or difference there may remain between said amount so found to be due to the contractor and the whole amount found to be due to claimants for such labor or materials, or both; a suit may be filed upon the bond without foreclosing the lien.

No change or alteration of the work or modification of any such contract between the owner and his contractor shall release or exonerate any surety or sureties upon any bond given under this section. It is the intent and purpose of this section to limit the owner's liability, in all cases, to the measure of the contract price where he shall have filed or caused to be filed in good faith with his original contract a valid bond with good and sufficient sureties in the amount and upon the conditions as herein provided. It shall be lawful for the owner to protect himself against any failure of the contractor to perform his contract and make full payment for all work done and materials furnished thereunder by exacting such bond or other security as he may deem satisfactory. Any person, except the contractor, who has furnished labor or materials, or who has contracted to do so, may at any time give the owner notice to that effect. Any form of wording will do so long as it states substantially the facts in the case as they exist at the time of giving the notice. It is not compulsory upon a private owner to withhold any moneys due the contractor after he has received such notice, but it shall be lawful for him to do so; for as the object of the notice is to put him on his guard, if he does pay over any moneys after he has received notice he does so at his peril. Public improvements, and all buildings used for fire and military purposes, are, on grounds of public policy and necessity exempt from execution and forced sale; and as a me-

chanics' lien involves a foreclosure, a lien cannot be claimed against such property. Provision is therefore made in cases of improvements upon public property that whenever notice is given as aforesaid the person or persons who contracted with the contractor for the work must withhold sufficient moneys from the contractor to satisfy such claim if proved valid. The owner also has the right to demand in writing a similar notice or statement of facts at any time either before or after the work is commenced. Refusal to give the owner such notice when demanded forfeits the right to claim a lien. The transfer of property after the commencement of the work does not affect the rights of the lien claimant.

1184. Any of the persons mentioned in the preceding section, except the contractor, may at any time prior to the expiration of the period within which claims of lien must be filed for record, as prescribed by the provisions of section one thousand one hundred eighty-seven, give to the owner a notice that they have performed labor or furnished materials, or both, to the contractor or other person acting by the authority of the owner, or that they have agreed to do so, stating in general terms the kind of labor and materials and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both, and any of said persons who shall on the written demand of the owner refuse to give such notice shall thereby deprive himself of the right to claim a lien under this chapter. Such notice must be verified by the claimant, or by some person acting in his behalf, and may be given by delivering the same to said owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, if any; provided, however, that in all cases in which said work is being done under a contract with the state, or with any public board, commission, or officer thereof, or with any political subdivision thereof, such notice must be filed, within said time, in the office of the controller, auditor or other public disbursing officer whose duty it is to make payments under the provisions of such contract. No such notice shall be invalid by reason of any defect in form, provided it is sufficient to inform the owner of the substantial matters herein provided for. Upon such notice being given it shall be lawful for the owner to withhold, and in the case of property which, for rea-

sons of public policy or otherwise, is not subject to liens in this chapter provided for, the owner or person who contracted with the contractor, shall withhold from his contractor sufficient money due or that may become due to such contractor to answer such claim and any lien that may be filed therefor, including the reasonable cost of any litigation thereunder.

1184a, 1919. No action to enforce the payment of any such claim shall be commenced against the owner, nor against the state or any public board, commission, or officer thereof, nor against any political subdivision of the state or the disbursing officer thereof whose duty it is to make payments under provisions of such contract, prior to the expiration of the period within which claims of lien must be filed for record, as prescribed by section one thousand one hundred thirty-seven of this code, nor shall any such suit be commenced later than ninety days following the expiration of such period. Any number of persons who have given such notices may join in the same action and when separate actions are commenced the court first acquiring jurisdiction may consolidate them. Upon the demand of the owner the court shall require all claimants to the moneys withheld by the owner in response to such notices to be interpleaded in said action, to the end that the respective rights of all parties may be adjudicated and settled therein.

1184b, 1919. In the event the moneys so withheld by the owner shall be insufficient to pay in full the valid demands of all the persons by whom such notices were given, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of such valid demands. Such pro rata distribution of said moneys shall be made among the persons entitled to share therein, without regard to the order of priority in which their respective notices may have been given or their respective actions, if any, commenced.

1184c. Nothing contained in the three preceding sections shall be construed to impair in any manner the right of any person by whom such notice has been given to recover from the contractor and the surety or sureties upon his bond any deficit that may remain unpaid after such pro rata distribution in an action commenced under the provisions of an act entitled "An act to secure the payment of the claims of material men, mechanics, or laborers, employed by contractors upon state, municipal, or other public work,"

approved March 27, 1887, and the acts amendatory thereof and supplemental thereto; provided, that any person who shall wilfully give a false natic of his claim to the owner or who shall wilfully include in his claim work or materials not performed upon or furnished for the property described in such notice shall forfeit all right to participate in the distribution of such moneys.

1185. The land upon which any building improvements, well or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the material for the same, the land belonged to the person who caused said building, improvement, well or structure to be constructed, altered or repaired, but if such person owned less than fee simple estate in such land, then only his interest in it is subject to such lien, except as provided in section 1192. Mortgages, judgments, or other incumbrances which have been properly recorded, or of which the lien claimant had actual notice or knowledge at the time of commencing the work (in the case of the original contractor, or of the sub-contractor); or, at the time he commenced to labor (in the case of the laborer); or, at the time he commenced to furnish materials (in the case of the material man), have precedence over mechanics' liens which may be claimed subsequently to it. Mechanics' liens, however, have precedence over mortgages or other incumbrances which may attach to the property after the commencement of the work. They also have precedence over any unrecorded incumbrance unless actual notice of its existence be given the lien claimant before he commenced to labor or furnish materials.

1186. The liens provided for in this chapter are preferred to any lien, mortgage, or other encumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished; also to any lien, mortgage, or other encumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.

1187. Every original contractor, claiming the benefit of this chapter, within sixty days after the completion of his contract, and

every person save the original contractor claiming the benefit of this chapter at any time after he has ceased to perform labor or furnish material, or both, for any work of improvement mentioned in this chapter, and until thirty days after the completion of such work of improvement, may file for record with the county recorder of the county or city and county in which such property or some part thereof is situated a claim of lien containing a statement of his demand after deducting all just credits and offsets, the name of the owner or reputed owner, if known, a general statement of the kind of work done or materials furnished by him, or both, the name of the person by whom he was employed or to whom he furnished the materials, and a description of the property sought to be charged with the lien sufficient for identification; which claim of lien must be verified by oath of claimant or some other person. Any trivial imperfection in the said work, or in the completion of any contract by any lien claimant, or in the construction of any building, improvement or structure, or of the alteration, addition to, or repair thereof, shall not be deemed such a lack of completion as to prevent the filing of any lien; and in all cases, any of the following shall be deemed equivalent to a completion for all the purposes of this chapter; the owner, or his representative, accompanied by cessation from labor thereon; or the acceptance by the owner, or said agent, of said building, improvement or structure; or cessation from labor for thirty days upon any contract or upon any building, improvement or structure, or the alteration, addition to, or repair thereof; the filing of the notice hereinafter provided for. The owner shall within ten days after the completion of any contract or improvement provided for in this chapter, or within ten days after there has been a cessation from labor thereon for a period of thirty days, file for record in the office of the county recorder of the county where the property is situated, a notice setting forth the date when the same was completed, or on which cessation from labor occurred, together with his name and the nature of his title, and a description of the property sufficient for identification, which notice shall be verified by himself or some other person on his behalf. The fee for recording the same shall be one dollar. In case such notice be not so filed, then all persons claiming the benefit of this chapter shall have ninety days after the completion of said improvement within which to file their claims of lien.

1188. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time, designate the amount due to him on each of such buildings, mining claims, or other improvements; otherwise the lien of such claims is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

1190. No lien provided for in this chapter binds any property for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than one year from the time the work is completed, by any agreement to give credit, and in case such proceedings be not prosecuted to trial within two years after the commencement the court may in its discretion dismiss the same for want of prosecution, and in all cases the dismissal of such action (unless it be expressly stated that the same is without prejudice), or a judgment rendered therein that no lien exists, shall be equivalent to the cancellation and removal from the record of such lien.

1191. Any person who, at the request of the owner of any lot or tract of land, grades, fills in, or otherwise improves the same, or the street, highway, or sidewalk in front of or adjoining the same, or constructs any areas, or vaults, or cellars, or rooms under said sidewalks, or makes any improvements in connection therewith, has a lien upon said lot or tract of land for his work done and materials furnished; provided, that in cases where the improvement made, or work done, is subject to acceptance by any municipal board or officers, the time for filing claims of lien shall not commence to run until after such acceptance shall have been made.

1191a. Any health officer or governing board of any city, town or sanitary district, having served written notice upon the owner or reputed owner of real estate upon which there is a dwelling house, and such owner or reputed owner, after thirty days, having refused, neglected or failed to connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in

a sanitary manner, with the adjoining street sewer, may construct same, at a reasonable cost, and the person doing said work at the request of such health officer or governing board, has a lien upon said real estate for his work done and materials furnished, and such work done and materials furnished shall be held to have been done and furnished at the instance of such owner, or reputed owner, or person claiming or having any interest in it.

1192. Every building or other improvement, or work mentioned in any of the preceding sections of this chapter, constructed, altered or repaired upon any land with the knowledge of the owner or of any person having or claiming any estate therein, and the work or labor done or materials furnished mentioned in any of said sections with the knowledge of the owner or persons having or claiming any estate in the land, shall be held to have been constructed, performed or furnished at the instance of such owner or person having or claiming any estate therein, and such interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming any estate therein shall, within ten days after he shall have obtained knowledge of such construction, alteration or repair or work or labor, give notice that he will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the property, and shall also, within the same period, file for record a verified copy of said notice in the office of the county recorder of the said county in which said property or some part thereof is situated. Said notice shall contain a description of the property affected thereby sufficient for identification, with the name, and the nature of the title or interest of the person giving the same. Said copy so recorded may be verified by anyone having a knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

1193. Any contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid, and embraced within his contract. And in all cases where a lien shall be filed under this act for work done or for materials furnished to any contractor, he shall defend any action brought thereon at his own expense. And during the pendency of such action the owner may withhold from the contractor the amount of judgment against the

owner or his property upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due, by him to the contractor, the amount of such judgment and costs. And if the amount of such judgment and costs shall exceed the amount due by him to the contractor in full he shall be entitled to recover back from the contractor, or his bondsmen or sureties, on any bond given for the faithful performance of his contract, any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable. No act done by such owner in compliance with any of the provisions of this chapter shall be held to be a prevention of the performance of any such contract by the contractor, or to have exonerated the sureties on such or any bond given for faithful performance, or for the payment of liens of persons performing labor or furnishing materials or both; provided that such act was done in good faith and without design to injure or harass anyone. When the property upon which the lien is attached does not bring enough at the foreclosure sale thereof to satisfy the lien, or liens, thereon, the deficiency may be entered up in the judgment book, and it then becomes a lien, for a period of five years, upon any other real property of the responsible party, which he may then own in the county or which he may afterward acquire.

1194. Whenever on the sale of the property subject to any of the liens provided for in this chapter, under the judgment or decree of foreclosure of such lien, there is a deficiency of proceeds, judgment for the deficiency may be docketed against the party personally liable for it in like manner and with like effect as in action for the foreclosure of mortgages.

1195. Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. The court must also allow, as a part of the costs, the money paid for verifying and recording the lien, such costs to be allowed to each claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action or separate actions are consolidated. The person who sells materials may attach them in a suit to recover the amount due to him for the same, at any time before they are actually used in the construction for which they were purchased; but no other person can

attach them for any debt whatsoever owed by the purchaser of such materials.

1196. Whenever materials shall have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money of it, so long as in good faith, the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement. The right to bring a personal civil suit to recover for labor or materials furnished is in no way impaired or forfeited by filing a claim for lien. Such civil action may be brought at any time after the account becomes due, and any real or personal property of the debtor may be attached, as in other personal suits. Any lien which has already attached, or the right to file such lien, is not in any way affected by bringing a civil suit regarding the same matter, except that any moneys collected as a result of such suit shall be deducted from the amount allowed on the claim of lien.

It shall not be competent for the owner and contractor, or either of them, by any term of their contract, or otherwise, to waive, affect, or impair the claims and liens of other persons, whether with or without notice, except by their written consent, and any term of the contract to that effect shall be null and void. Any person who shall wilfully give a false notice of his claim to the owner under the provisions of section 1184 shall forfeit his lien. Any person who shall wilfully include in his claim filed under section 1187 work or materials not performed upon or furnished for the property described in the claims shall forfeit his lien. No mistake or errors in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due, was made with the intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

MINING LIEN: See Mechanic's Lien (this Article) 1184.

MINING PARTNER'S LIEN: Each member of a mining partnership has a lien on the partnership property independent of possession for debts due the creditors and for money advanced for its use. Any person buying the interests of a mining partner when the partnership is engaged in working the property—takes it subject to notice of all such liens. This lien is valid against everybody except one who purchases without notice, in good faith, and for a valuable consideration. When one partner sells his interest in the property, the lien property becomes primarily liable for the debt and the partner who sells, becomes secondarily liable. This lien cannot be waived by the person entitled to it. See Waiver.

PARTNERSHIP: Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him.

PERSONAL PROPERTY LIEN: One who sells personal property has a special lien on it—dependent upon possession—for its price (if it is in his possession when the price is payable); and may enforce his lien in the same manner as if the property was pledged to him for its price. See Pledges. A person who sells movable property and transfers the title to it, has a lien on it, dependent on possession, for so much of the price as remains unpaid. That is, if one sells property shipped elsewhere, the right of possession remains in the shipper until delivery to the purchaser, and the purchaser has the right to recall the shipment, under certain conditions. See Stoppage in Transit. His lien is enforced by a foreclosure action, or by a sale by him after notice to the buyer conducted as if the property were in pledge. See Pledges.

Every person who, while lawfully in possession of an article of personal property renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and livery or boarding or feed stable proprietors, and persons

pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work; and veterinary proprietors and veterinary surgeons shall have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; and keepers of garages for automobiles shall have a lien, dependent on possession for their compensation in caring for and safe keeping (of) such automobiles.

PASTURING LIEN: See Personal Property Lien.

PLEDGE: The lien of a pledge is dependent upon possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder. The increase of property is pledged with the property. One who has a lien upon pledged property may pledge it to the extent of his lien. See Pledge.

SEAMEN and mate of a ship have a general lien, independent upon possession, upon the ship and its freightage, for their wages, which is superior to every other lien. See Bottomry; Respondentia.

SHERIFF'S LIEN: An officer who levies an attachment, or execution, upon movable property, acquires a special lien (dependent upon possession) upon such property. This lien authorizes him to hold it until the process is discharged or satisfied—or until a judicial sale is held. See also Salvage Lien.

SALVAGE: See also Wrecks, Ships, Carriers. Sheriffs and all persons employed by them, or aiding in the recovery and preservation of wrecked property, are entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved; and the officer having the custody of such property must detain it until the same are paid or tendered. But the whole salvage claimed must not exceed one-half of the value of the property or proceeds on which it is charged; and every agreement, order, or adjustment, allowing a greater salvage is void, unless ordered and allowed by the county judge.

STALLION: Every person having in charge any stallion, jack or bull, used for propagating purposes, has a lien for the agreed price

of its service upon any mare, or cow and upon the offspring of such service; unless some wilfully false representation concerning the breeding or pedigree of such stallion, jack or bull has been made or published by the owner or person in charge of it, or by some person, at the request or instigation of such owner or person in charge. Every person who claims such a lien, must (within ninety days after the service was rendered), file in the office of the county recorder of the county where the mare or cow subject is kept, a verified claim containing (a) a particular description of the mare or cow (b) the date (c) and place of service (d) the name of the owner or reputed owner of such animal (e) a description by name, or otherwise, of the stallion, jack or bull performing the service (f) the name of the owner or person in charge of it and (g) the amount of the lien claimed. Such claim, so filed is notice to subsequent purchasers and encumbrancers of such mare or cow and of the offspring of such service for a period of one year after such filing.

STOCK: Every person who pastures stock for another has a lien on such stock in his possession, for his reasonable charges for their care. See also Grazing Lien.

STORAGE: A depository for hire has a lien for storage charges and for advances and insurance incurred at the request of the bailor, and for money necessarily expended in and about the care, preservation and keeping of the property stored, and he also has a lien for money advanced at the request of the bailor, to discharge a prior lien, and for the expense of a sale where default has been made in satisfying a valid lien.

THRESHING MACHINE: Every person performing work or labor in, with, about, or upon any barley crusher, threshing machine or engine, horsepower, wagon, or other appliance thereof, while engaged in crushing or threshing, has a lien thereon to the extent of the value of his services. Such lien extends for ten days after any such person ceases such work or labor; provided within that time, an action is brought to recover the amount of the claim. If judgment is given in his favor in such action, and it is further found that he is entitled to a lien under the provisions of this section, the property subject to such lien—or so much of it as may be necessary—may be sold to satisfy such judgment; but if several judgments have been recovered against the same property for the enforcement

of such lien, the proceeds of the sale must be divided among the judgment creditors pro rata.

VENDOR'S LIEN: One who sells real property has a vendor's lien upon it—*independent of possession*—for so much of the price as remains unpaid and unsecured in any manner than by the personal obligation of the buyer (this does not apply if a mortgage is taken by the seller for part of the purchase price). (See Bill of Lading, 2130f; Warehouse Receipts, 49.)

Purchaser's lien upon REAL PROPERTY: One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property—*independent of possession*—for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration. These liens described in the foregoing paragraphs are valid against every one claiming under the debtor—except a purchaser or encumbrancer in good faith, and for value. And when a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts, and to return the surplus—is not such a waiver.

A VETERINARY hospital proprietor or surgeon has a lien on any stock, or animals, in his possession, for the benefit of which he has rendered services or care. See Personal Property lien.

WAGES: See Seaman's Lien. When any assignment, whether voluntary or involuntary, is made for the benefit of creditors of the assignor or results from any proceeding in insolvency commenced against him—the wages and salaries of mechanics, miners, salesmen, servants, clerks, laborers and other persons for services rendered for him within sixty days before such assignment, or to the commencement of such proceeding, and not exceeding one hundred dollars each—constitute preferred claims, and must be paid by the trustee or assignee before the claim of any other creditor of the assignor or insolvent. Upon the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, laborer, or other employee (not to exceed one hundred dollars), for work done or services rendered within sixty days before such death, must be paid before any other claim against the estate of such employer except his funeral expenses, and the expenses of his last sickness, the al-

lowance to the widow and infant children, and the charges and expenses of administration. Upon the levy of any attachment or execution, not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, or laborer, or other person who has performed work or rendered services for the defendant within sixty days before the levy, may file a verified statement of his claim for it with the officer executing the writ (and give copies of it to the debtor and the creditor), and such claim—not exceeding one hundred dollars—unless disputed, must be paid by such officer from the proceeds of such levy remaining in his hands at the filing of such statement. If any claim is disputed, within five days after receiving the copy of it, the claimant must (within ten days afterwards) commence an action for the recovery of the demand. Unless such action is prosecuted with due diligence, his claim for priority of payment is forever barred.

If the claim is disputed, either the debtor or creditor must file with the officer a verified statement denying that any part of such claim is due for services rendered within 60 days next preceding the levy, or denying that any part of such claim (except a specified sum) is so due. If a part of the claim is admitted to be due, and the claim is admitted to be due, and the claimant brings suit and does not recover more than the amount so admitted, he cannot recover costs—but costs will be adjudged against him.

WAREHOUSEMAN'S LIEN:

Sec. 27. Subject to the provisions of section thirty, a warehouseman shall have a lien on goods deposited by the owner or by the legal possessor of the property or on the proceeds of it in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

Sec. 28. Subject to the provisions of section thirty, a warehouseman's lien may be enforced: (a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and (b) Against all goods belonging to others which have been deposited at any time by

the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person was in legal possession of the goods when they were deposited.

Sec. 29. A warehouseman loses his lien upon goods—(a) By surrendering possession of them, or (b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

Sec. 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien on them, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges numerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

Sec. 31. A warehouseman having a lien valid against the person demanding his goods may refuse to deliver the goods to him until the lien is satisfied.

Sec. 32. Whether or not a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

Sec. 33. A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due. (b) A brief description of the goods against which the lien exists. (c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue shall be paid on or before the day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time

when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and (d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given a sale of goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places in it. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. At any time before the goods are sold any person claiming a right of property possession in them may pay the warehouseman the amount necessary to satisfy his lien and pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Sec. 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the

warehouseman may give such notice to the owner, or to the person in whose name the goods are stored (as is reasonable and possible under the circumstances), to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason of so doing. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

Sec. 35. The remedy for enforcing a lien herein provided does not include any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

Sec. 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Life Insurance: See Insurance.

Liquidated Damages: Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation—is determined in anticipation of it—is to that extent void; except that these parties may agree in the contract that an amount which shall be presumed to be the amount of damage sustained by a breach of it, when—from the nature of the case it would be impracticable or extremely difficult to fix the actual damage. See Contracts.

Statute of Limitations, or the time in which certain rights of action outlaw, or the period after which an action based upon these causes can not be brought.

ACCOUNT STATED—four years.

ADVERSE POSSESSION—three years.

ASSESSMENTS (to recover stock sold for non-payment of)—six months from date of sale.

ATTORNEY'S FEE—begins at performance of each item, and runs for two years (but see Account Stated); a division of, between attorneys—two years.

BATTERY—one year from the act.

BOND—of guardian, two years; notary's, four years from the time of the act.

BOOK ACCOUNT—balance on—four years; open, four years.

CHATTELS; injury to, by wrongful act—three years.

CLAIM AND DELIVERY—three years after the article was taken.

COMMUNITY PROPERTY—action by husband to recover—one year after wife's deed.

CONSTABLE—for doing an act in his official capacity and by virtue of his office, or by the omission of an official duty, including nonpayment of money collected upon an execution—two years after the liability was incurred.

CONTRACT—in writing, made in this state—four years from maturity; made out of this state, two years; oral, or implied contract, two years after maturity—or (in case of fraudulent concealment, then after discovery).

CONTRIBUTION—two years after payment by one party.

COUNTY—claims against—six months after claim is first rejected by the Board of Supervisors to whom it has been presented.

CRIMES; no limit for murder, embezzlement of public funds, or the falsification of public records; for any other felony, an indictment must be found, or an information filed, within three years after its commission; for misdemeanor, within one year after its commission.

DEATH; damages for, by wrongful act; two years.

DEPOSITORY for hire—one year after storage charges not paid.

DETAINING goods—three years.

DIRECTORS—three years for certain acts and no limitation for others.

DIVORCE; adultery—two years after; desertion, neglect, intemperance, one year continuing; felony, two years after pardon; after condonation, two years.

EXECUTION LIEN, five years after entry of judgment, but execution issued at any time after by order of court.

FALSE IMPRISONMENT, one year after the act.

FELONY, three years after commission of the act.

FORFEITURE (under a statute) one year.

FRAUD, three years after the fraud is discovered; in conveying real property, to set aside deed by creditors, five years from date of judgment, or sale of property.

FRUIT TREES; prosecution for misbranding, seven years.

GUARDIAN, Ward against; three years.

I. O. U.; four years.

JUDGMENT, to vacate void, four years; lien of, five years (domestic); foreign, four years, or within the time set by laws of that state.

LIENS—See each lien, as each differs.

LIBEL—one year after the libel was uttered, or published.

MALICIOUS PROSECUTION; two years after act.

MISDEMEANOR—one year after the act committed.

MISTAKE—three years after discovery.

MORTGAGE—four years after its due date; breach of condition in the instrument—five years; to redeem from sale—one year from date of sale.

NEGLIGENCE, except personal injuries—two years after act committed.

PENALTY under statute; one year after act committed.

PERSONAL PROPERTY—taking, detaining or injuring; three years.

PERSONAL INJURIES—one year after injury sustained (but see Stockholders' Liability).

QUIET TITLE—five years.

REAL PROPERTY; to recover, by private person—five years after being deprived of possession; to redeem from lien—five years from adverse possession; to redeem from sale under execution—one year after sale; to recover from sale by executor—three years after final account of estate.

SEDUCTION—one year after act.

SEIZURE of personal property by officer—six months after.

SIEZEN; breach of covenant of—two years after breach.

SLANDER—same as libel.

STOCKHOLDERS' LIABILITY—is primary; three years from time right of action accrues, including torts.

STREET ASSESSMENTS period is fixed in each case by the statute creating it.

STORAGE—see depository.

TAXES, paid under protest—six months after payment.

TRESPASS—on real property—three years after the act is committed; or if its commission concealed by fraud, then three years after discovery of the act.

TRUST—express—four years after trustee repudiates; constructive or implied—four years after inception.

UNLAWFUL DETAINER—one year.

Events which change the operation of the time of the statute; if the debtor dies before action is brought, the time is extended one year after letters testamentary are issued (but not if the cause of action is one based upon torts—such as slander, negligence, etc). If the creditor dies, the period is extended six months, provided the cause of action survives, as in the case of debtor. If the debtor leaves the state—the time is suspended while he is away. If the debtor is person with whom this country is at war, time is suspended until war ended. If injunction issued, suspended during the time it is in force. A written acknowledgment will begin a new time to run, or a promise to pay “when able” will extend the time indefinitely. Such written acknowledgment must be a distinct, unqualified, unconditional recognition of the obligation for which the person making such admission is liable. The following words, in a letter, are not such promise: “I loaned a party some money, which he promised sure by next month I would get \$300 of it. Should I succeed in this I will send you sure \$150 or \$200 on account. At the present time I can not do anything on account I have not it.”

Payment on account does not extend the time, or renew it.

Lis Pendens: (literally) pendency of action; is a notice which is filed with the County Recorder at any time when a law suit is pending which involves the title to real property. This serves to create a temporary cloud upon the property, so that no one will buy, sell or incur it until the suit is finally determined or settled.

Livery Stable Keeper. See Liens. Every owner, manager, proprietor, or other person, having the management, charge or control of any livery stable, feed, or boarding stable, and every person pasturing stock, who shall receive and take into his possession, charge, care or control, any horse, mare, or other animal, or any buggy or

other vehicle, belonging to any other person, to be by him kept, fed or cared for, and who (while said horse, mare or other animal or buggy or other vehicle, belonging to any other person, to be by him kept, fed or cared for, and who (while said horse, mare or other animal or buggy or other vehicle), is thus in his possession, charge, care or under his control, as aforesaid, shall drive, ride or use, or knowingly permit or allow any person other than the owner or other person entitled so to do, to ride, drive, or otherwise use the same, without the consent or permission of the owner of it, or other person charged with the care, control or possession of such property, shall be guilty of a misdemeanor.

Live-Stock Lien: See Liens.

Loan: See Interest; Personal Property; Pledge; Depository.

A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time the sum equivalent to that which was borrowed. (A loan for mere use is explained by the article on loan for use.) A borrower of money (unless there is an express contract to the contrary), must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. (Such as "Gold Coin of U. S. of current weight and fineness.") Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly agreed at the time in writing. See Interest.

A **LOAN OF EXCHANGE** is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use. In such loan the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

A **LOAN OF USE** is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use. This does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender. One who borrows a living animal for use, must treat it with great kindness, and provide everything necessary and suitable

for it. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent; he is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess. He may use it for such purposes only as the lender might reasonably anticipate at the time of lending, and must repair all deterioration or injuries to the thing lent, which are occasioned by his negligence, however slight. He must not part with it to a third person, without the consent of the lender, and must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower. He must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was contemplated by them, then at the place where it was when loaned.

The lender of a thing for use must indemnify the borrower for damage caused by defects or vice in it, which he knew at the time of lending, and concealed from the borrower. He may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss (exceeding the benefit derived by him from the loan), the lender must indemnify him for such loss, if he compels such return, and if the borrower has not in any manner violated his duty toward the lender. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demand. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this article.

Lodger: See Landlord and Tenant.

Lodging House: See Liens; Inns; Hotel.

Logger: See Lumber; Liens; Personal Property; Real Estate.

Luggage: See Carriers; Hotels; Liens.

Lumber: See Logger's Lien; Personal Property; Fixtures, under Real Estate. The word "lumber" is used in this article to designate all timber, whether in logs, boards, planks, or beams, and

whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood. Whenever any lumber drifts upon any island in any of the waters of this state, or upon the bank of any such waters, the owners of the lumber may remove it on payment or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the lumber. If the owner of such lumber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the lumber, to the sheriff of the county, and thereafter the sheriff must dispose of the same as required with regard to wrecked perishable property. When sold, the proceeds of the lumber must be applied, first, to the payment of the charges of sale, and in liquidation of the expenses and damages awarded to the person entitled to it; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representatives or assigns, on the production of satisfactory proof of ownership to the judge of the Superior Court of the county, and on his order therefor, made within one year after its receipt. The rejection by the judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds the same must, by the county treasurer, be placed in the common-school fund of the county.

Mails, Use of to Defraud: While this is strictly a United States statute, yet it affects everybody, as it concerns the mail privilege. It is intended to prevent a fraudulent scheme by mail—that is, by letter, postal, package, parcel, circular, advertisement in a newspaper which is mailed,—a scheme devised or intended to be devised to defraud or obtaining money or property by means of false pretenses, and (2) for the purpose of executing such scheme, or attempting to do so, to place any letter in any post office of the U. S. to be sent or delivered by the post office establishment. Each letter would be a separate offense.

Maker: See Negotiable Instruments, ¶3142, 3144, 3145.

Malice, in its legal sense, means a wrongful act, done intentionally, without cause or excuse. In actions of libel and slander, it is divided into two classes; malice in law and malice in fact. Malice in fact is a spiteful or rancorous disposition which causes an act to be done for mischief.

Malicious Prosecution: One who causes another to be prosecuted (arrested, imprisoned, or tried) for a crime, is liable in damages, provided he acted through malice and without probable cause. Malice is an evil or sinister motive actuating the person who began the action; it may be inferred from want of probable cause; but want of probable cause cannot be presumed from malice. Probable cause is the suspicion founded upon circumstances strong enough to warrant a reasonable man to believe that the charge was true; a mere belief in guilt is not enough, nor advice of counsel; nor dismissal of the criminal charge. But if a person had consulted an attorney at law in good standing, and had related all the facts to him, and had been advised by him that he had probable cause—this would be enough. An action for malicious prosecution must be brought within four years, if based upon a criminal charge; and within two years, if based upon a civil action, such as wrongful attachment.

Manufacturers' Lien: See Lien of Personal Property; Accession.

Marine Insurance: See Insurance.

Mark: See Signature, under Real Estate; Trade Mark.

Market Value is the price for which an equivalent could be reasonably and fairly purchased at or near the place where the merchandise should have been delivered, and within a reasonable time after refusal to deliver. Of land; is the highest price estimated in terms of money which the land would bring if exposed to sale in the open market. Of a commodity; the highest price in the market where it is offered for sale to those having the inclination and means to pay for it.

Master and Servant: A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily

rate, for one day; a hiring by piecework, for no specified term. In the absence of any agreement or custom as to the term of service, the time of payment, or the rate of value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service. The entire time of a domestic servant belongs to the master; and the time of other servants to such an extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day. All the services rendered by one who receives a regular salary, if of the same nature as his regular duties, are presumed to be paid for by the salary. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not: 1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or, 2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have employed him. If a servant abandons or departs from the business of his master and engages in some matter suggested solely by his own pleasure or convenience, or pursues some object which relates to an end or purpose which may be said to be the servant's individual and exclusive business, and, while so engaged, the servant commits a tort, the master is not answerable, although the servant was using the master's property, and although the injury would not have been caused without the facilities afforded to the servant by reason of his relations to the master.

Master and Servant: "The liability of the master can only occur when that which is done is within the real or apparent scope of the master's employment. It does not arise when the servant steps outside of his employment to do an act for himself, not connected with the master's business. Beyond the scope of his em-

ployment the servant is as much a stranger to his master as any third person. The master is only responsible so long as the servant can be said to be doing the act in the doing of which he is guilty of negligence in the course of his employment. A master is not responsible for any act or omission of his servant which is not connected with the business in which he serves him, and does not happen in the course of his employment. And to determine whether a particular act is done in the course of the servant's employment it is proper first to inquire whether the servant was at the time engaged in serving his master. If the act be done while the servant is at liberty from the service, and pursuing his own ends exclusively, the master is not responsible. If the servant, at the time the injury was inflicted, was acting for himself and as his own master temporarily, the master is not liable. If the servant step aside, from his master's business, for however so short a time to do an act not connected with such business, the relation of master and servant is for the time suspended.

Maturity: See Contracts; Limitations; Negotiable Instruments, ¶3166.

Measure of Damages is the amount of money which is supposed to recompense the plaintiff for the injury which he has suffered, or repay him for his financial loss.

Mechanics' Lien: See Liens.

Menace: Menace consists in a threat: 1. Of such Duress as is described in its definition. 2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or, 3. Of injury to the character of any such person. See contracts.

Mine: See Directors; Corporations. While the locator of mining claims derives his title from the Federal Government, and must obey and follow Federal laws on the subject, yet—as California has followed this U. S. Statutes, it is the California code rules which are quoted here. The United States statutes also authorize local customs or rules providing for additional regulations for the purpose of completing the location of mining claim. Seemingly any reasonable regulation can be made, as long as it does not conflict with the laws of the United States, and miners rules have just as much force as statutes. The proceeding of miners in the location of their mining claims are to be regarded with indulgence, and their notices

of location are to be liberally construed. The failure to comply with any one mining regulation, or rule, cannot of itself work a forfeiture of title, unless the rule expressly so provides.

The only prerequisites to the vesting of possessory title to a lode bearing mineral claim in a locator are (1) discovery of such a lode within the vacant unappropriated mineral land belonging to the United States, and (2) the distinct marking of the boundaries of the claim so that they can be readily traced. Where minerals have been found, and the evidence of it is such that a person of ordinary prudence would be justified in the further expenditure of his labor and money (with a reasonable prospect of success in developing a valuable mine), the requirements of the statute have been met.

Any person, a citizen of the United States, or who has declared his intention to become such, who discovers a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit, may locate a claim upon such vein or lode, by defining the boundaries of the claim, in the manner hereinafter described, and by posting a notice of such location, at the point of discovery, which notice must contain: First—The name of the lode or claim. Second—The name of the locator or locators. Third—The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the claim, and the general course of the vein or lode, as near as may be. Fourth—The date of location. Fifth—Such a description of the claim by reference to some natural object, or permanent monument, as will identify the claim located. A vein is a fissure or gouge or any evidence of mineralization which will lead a practical miner from one ore body to another, and which does so lead him in the course of his work. The words "vein," "lode," "ledge" are to be defined as the terms are commonly used by miners as the result of their practical experience—and not as technically defined by geologists.

The locator must define the boundaries of his claim so that they may be readily traced, and in no case shall the claim extend more than fifteen hundred feet along the course of the vein or lode, nor more than three hundred feet on either side of it, measured from the center line of the vein at the surface. Within thirty days after the posting of his notice of location upon a lode mining claim, the locator shall record a true copy of it in the office of the county re-

corder of the county in which such claim is situated, for which service the county recorder shall receive a fee of one dollar. One cannot claim a greater length in either direction than he specifies in his location notice; but if he makes his location too long, it is voidable as to the excess, only, and could be amended—if it can be done without injury to the rights of others.

PLACER CLAIMS include all forms of deposit, excepting veins of quartz, or other rock in place—such as alum, amber, asphaltum, borax, cement, coal, diamonds, guano, gypsum, kaolin (china clay), gravel, limestone, marble, mica, onyx, salt, sand, sandstone, building stone, petroleum, natural gas, brick and other classes of clay, phosphates, potash, slate for roofing purposes, umber.

These claims can be located in forty acre tracts, and be divided into 10 acre tracts—but no more than 160 acres for any one person or association of persons. Gravel deposits along the beds of water courses may be appropriated, if the stream is not navigable, and does not interfere with any riparian rights; this does not apply to tide lands, but does apply in forest reserve lands.

The location of a placer claim is made by posting on it upon a tree, rock in place, stone, post or monument, a notice of location, containing the name of the claim, name of locator or locators, date of location, number of feet or acreage claimed, such a description of the claim by reference to some natural object or permanent monument as will identify the claim located, and by marking the boundaries so that they may be readily traced; provided, that where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions and no other reference than those of said survey shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking. Within thirty days after the posting of the notice of location of the placer claim, the locator shall record a true copy of it in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of one dollar.

The locator of a **TUNNEL** right or location, shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel, which must contain: First—The name of the locator or locators. Second—The date of the loca-

tion. Third—The proposed course or direction of the tunnel. Fourth—A description of the tunnel with reference to some natural object or permanent monument as shall identify the claim or tunnel right. The boundary line of the tunnel shall be established by stakes or monuments placed along the lines at an interval of not more than six hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom. Within thirty days after the posting of location of the tunnel right or location, the locator shall record a true copy of it in the office of the county recorder of the county in which such claim is situated, for which service the recorder shall receive a fee of one dollar. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original location notice was defective, erroneous, or that the requirements of the law has not been complied with before filing; or in case the original notice was made before the passage of this act, and he shall be desirous of securing the benefit of this act, such locator, or his assigns, may file an additional notice, subject to the provisions of this act; provided, that such amended location notice does not interfere with the existing rights of others at the time of posting and filing such amended notice, and no such amended location notice or the record of it, shall preclude the claimant or claimants from proving any such title as he or they may have held under previous locations. Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral survey, or a licensed surveyor of this state, and his claim connected with the corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim, the fields notes of such survey, and attaches to and files with such location notice, a certificate of the surveyor, saying: First, that said survey was actually made by him, giving the date of it; Second, the name of the claims surveyed and the location of it; Third, that the description incorporated in the declaratory statement is sufficient to identify such survey. This certificate becomes a part of the record, and such record is prima facie evidence of the facts contained in it.

MILLSITE: The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, or any person qualified by the laws of the United States, may locate not more than five

acres of non-material land as a mill-site. Such location shall be made in the same manner as for locating placer claims. The locator of a mill-site or location, within thirty days from the date of his location, shall record a true copy of his location notice with the county recorder of the county in which such location is situated, for which service the recorder shall receive a fee of one dollar.

ASSESSMENT WORK: The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to-wit: One hundred dollars annually.

Whenever a mine owner, company, or corporation shall have performed the labor and made the improvements required by law upon any mining claim, the person in whose behalf such labor was performed or improvements made, or some one in his behalf, shall within thirty days after the time limited for performing such labor or making such improvements make and have recorded by the county recorder, in the county in which such mining claim is situated, an affidavit setting forth the value of labor or improvements made, the name of the claim, and the name of the owner or claimant of said claim at whose expense the same was made or performed. Such affidavit, or a copy of it, duly certified by the county recorder, shall be prima facie evidence of the performance of such labor or the making of such improvements, or both. Upon the failure of any claimant or mine owner to comply with the conditions of this act in the performance of labor, or making of improvements upon any claim, mine, or mining ground, the claim or mine upon which such failure occurred shall be opened to relocation in the same manner as if no location of the same had ever been made. But if, previous to relocation, the original locators, their heirs, assigns, or legal representatives, resume work upon such claim, and continue the same with reasonable diligence until the required amount of labor has been performed or improvements made, and the required statement of accounts and affidavits filed with the county recorder, then the claim shall not be subject to relocation because of previous failure to file accounts. Upon the failure of any one of the several co-owners to contribute his portion of the expenditures, required hereby, the co-owners who have performed the labor or made the improvement may, at the expiration of the year, give such delinquent co-owner personal notice, in writing, or by publication in the newspaper

published nearest the claim for at least once a week for ninety days; and if, at the expiration of ninety days after such notice in writing or publication, such delinquent shall fail or refuse to contribute his portion of the expenditures required by this section, his interest in the claim shall become the property of his co-owners who made the required expenditures. A copy of such notice, together with an affidavit showing personal service or publication, as the case may be, of such notice, when filed or recorded with the recorder of deeds of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such co-owners. Assessment work may consist of the actual labor in and about the claim itself (such as blasting the rock), it may be expenditures made upon drill holes, the expense of building a road to the claims, or even the cost of getting heavy machinery to the claims. Where a person or company has or may run a tunnel or cuts for the purpose and in good faith for the purpose of developing a lode, lodes, or claims owned by said person or company or corporation, the money so expended in running said tunnel shall be taken and considered as expended on said lodes or claims; provided, further, that said lode, claim, or claims shall be distinctly marked on the surface as provided by law. All mining locations and mining claims shall be subject to a reservation of the right of way through or over any mining claims, ditches, roads, canals, cuts, tunnels, and other easements for the purpose of working other mines; provided, that any danger occasioned thereby shall be assessed and paid for in the manner provided by law for land taken for public use under the right of eminent domain. The provisions of this act shall not in any manner be constructed as affecting or abolishing any mining district or the rules and regulations of it within the state of California. The failure or neglect of any locator of a mining claim to perform development work of the character, in the manner and within the time required by the laws of the United States, shall disqualify such locators from relocating the ground embraced in the original location or mining claim or any part of it under the mining laws, within three years after the date of his original location and any attempted re-location of it by any of the original locators shall render such location void.

OIL, PETROLEUM AND NATURAL GAS CLAIMS are to be located as placer, and the locator acquires no rights as against the government until he had actually made a discovery of the mineral;

but his location gives him the right as against every other person to proceed to prosecute work with a view to making a discovery of oil. Such possession cannot be disturbed by strangers. Operations under this method of mining are under the control of the Department of Petroleum and Gas, of the Bureau of Mines of California, who inspect all wells, test them, report upon them and may direct what shall be done about them from time to time. Natural gas must not be allowed to escape into the atmosphere; when the well is abandoned, it must be capped.

HYDRAULIC MINING may be carried on whenever and wherever it will not materially injure navigable streams or the lands adjacent to them. Such mining is that carried on by means of water under pressure, through a nozzle, directed against a natural bank. Operations under this method are controlled by the California Debris Commission, created by act of Congress March 1, 1893.

MINING CLAIMS ABANDONED: All abandoned mining shafts, pits or other abandoned excavations dangerous to passers-by or live-stock shall be securely covered or fenced, and kept so, by the owners of the land or persons in charge of the same, on which such shafts, pits or other excavations are located. Any person or persons failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All abandoned mining shafts, pits or other excavations situated on unoccupied public lands may be securely covered or fenced by order of the board of supervisors of the county wherein the same is (are) situated, and it shall be the duty of the board of supervisors to keep the same securely fenced or covered when it appears to them, by proof submitted, that the same is (are) dangerous or unsafe to man or beast. The cost of said covering or fencing to be a county charge. Any person or persons maliciously removing or destroying any covering or fencing placed around or over any shaft, pit or other excavation, as hereinbefore provided, shall be deemed guilty of a misdemeanor.

Minerals contained in the waters of any stream or lake in this state shall not be extracted from said waters except upon charges terms and conditions prescribed by law. No person, firm, corporation or association shall hereafter gain the right to extract or cause to be extracted said minerals from said waters by user, custom, prescription, appropriation, littoral rights, riparian rights, or in any manner other than by lease from or express permission of the state as pre-

scribed by law; and no such lease or permission shall be granted for a longer period than twenty-five years.

Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, under-current, riffle-box, or sulphurate machine, any gold dust, amalgam, or quick-silver, the property of another, shall be deemed guilty of grand larceny, and upon conviction of it, shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years.

Mineral: See Mining.

Miners' Inch: See Waters.

Minimum Wage Law: In 1913 the Legislature enacted a bill which brought into existence the Industrial Welfare Commission of the State of California, and gave it the authority to inquire into and remedy the wages paid to women and children, particularly with regard to their needs compared to the cost of living. This commission has since ordered a scale of wages which at this writing (1919) is a minimum of about \$13 per week for experienced women or children, and may change from time to time, as conditions of living change. Every employer who violates any order of the Commission is liable to fine or imprisonment, or both.

Mining Partnership Lien. See Liens.

Minors: See Children.

Mistake: May be either of law or of fact. (See Contracts.)

MISTAKE of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in (a) an unconscious ignorance or forgetfulness of a fact, past, or present, which is material to the contract; or, (b) belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing which has not existed.

Mistake of law, is such mistake, only when it arises in one of two ways: (a) a misapprehension of the law by all parties, all supposing that they knew and understood it, and all making the same mistake; or, (b) a misapprehension of the law by one of the parties, of which mistake on his part the others are aware at the time of contracting—but which they do not rectify.

A mistake of foreign laws is a mistake of fact.

Monopoly: See Food Warehouseman; Trade Union. Every con-

tract by which one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void—except that one who sells the goodwill (which see) of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part of it—as long as the buyer (or any person receiving title from him) carries on a like business in that place. Upon and in anticipation of a dissolution of a partnership, the partners may agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted—or within a specified part of such place.

Section 1. A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase the price of merchandise or of any commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.
5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they

may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void, provided that no agreement, combination or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed, provided further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations, engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation, having as its object or purpose the transportation, marketing or delivery of such commodities.

Section 2½. It shall be lawful to enter into agreements or form associations or combinations the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

Sec. 7. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (50) dollars nor more than five thousand (\$5,000) dollars, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

Sec. 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and shall not be enforceable either in law or in equity.

Sec. 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any affecting them now in force in this state.

Sec. 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust

certificates, or for any person, partnership, association or corporation, agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation, or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than five thousand dollars.

Sec. 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may recover twofold the damages by him sustained and the costs of suit.

Sec. 13. Labor whether skilled or unskilled is not a commodity within the meaning of this act.

Mortgage: See Negotiable Instruments, ¶3083; Chattel Mortgages; Crops; Real Estate; Actions; Judgment; Trust Deed; Attachments; Limitations; Warehouse Receipts; Bill of Lading. A mortgage is a contract by which certain property mentioned in the instrument is hypothecated for the payment of a debt, or the performance of an obligation, without the necessity of a change of possession. The person giving the mortgage is called the mortgagor, and the person to whom it is given is called the mortgagee. Any interest in real property which is capable of being transferred from one person to another may be mortgaged.

While perhaps the law does not say that a mortgage must be acknowledged, or proved, any prudent man would certainly have the acknowledgment made for his own protection. If it is not acknowledged, it cannot be recorded. Acknowledgment may be made before a notary public, a justice of the peace when the property is

situated in his own township, a county clerk, or county recorder. An assignment of a mortgage must be recorded in like manner as the mortgage itself in order to operate as notice of the interest of the assignee. Such assignment carries with it the security. It is not necessary, as between the parties, to record a mortgage, but as the object of recording is to give notice of its existence to all subsequent purchasers of the property, and to the creditors of the mortgagor, the mortgage must be recorded to be binding against them. Recording is considered in law to be notice to everyone, whether they have actual notice or not; but if it can be shown that subsequent purchasers or creditors did know of the existence of the mortgage, then it will be binding against them without being recorded. A recorded mortgage has precedence over an unrecorded one, although it may have been made after the latter. Every married person who falsely represents himself or herself as competent to mortgage any real estate, to the validity of which mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations wilfully mortgages the same, is guilty of felony. Every person who, after mortgaging real property, or after such property shall have been sold under foreclosure, disposes of, removes or carries away any house, barn, windmill, water tank, or other thing affixed to such premises, as an improvement thereon, without the written consent of the mortgagee or purchaser, is guilty of larceny. No person whose property is mortgaged must do any act which will in any way impair its value or lessen the mortgagee's security, except such things as he may be permitted to do by the terms of the mortgage, such as wear and tear by usage, etc. A mortgage does not entitle the mortgagee to possession of the property, unless expressly so stated in the mortgage; but the mortgagor may give up possession to the mortgagee at any time by agreement, without any new consideration. Any conditions agreed upon may be inserted in the mortgage, however, as to possession. Usually the mortgage does provide that the mortgagee may take possession whenever he deems the security unsafe, or in danger of deterioration, and, always in case the mortgagor fails to pay the debt, or perform the obligation which the mortgage is given to secure.

When a recorded mortgage has been satisfied, it may be discharged by an entry to that effect in the margin of the record book, signed by the mortgagee, or his personal representative or assignee, ac-

knowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment. Or, if not discharged in the above manner, the mortgage must be discharged by the recorder upon the presentation to him of a certificate signed by the mortgagee, his personal representative or assignee, duly acknowledged and certified, stating that the mortgage has been paid, satisfied, or discharged.

Proceedings for the foreclosure and redemption of mortgages are very technical matters, and it would be very unwise for any one to attempt to handle such things himself. The services of a competent attorney should be secured. Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon, where such judgment is not a lien upon such property; if the judgment is a lien upon the real property the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day such judgment became a lien on such property. And in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property.

A mortgage being simply a lien on certain specified property as security for the payment of an obligation, it follows that if the security fails the obligation still remains; therefore, if at the sale of the mortgaged property it does not realize enough to fully discharge the obligation, the deficiency becomes a judgment against the mortgagor, or any one who may have assumed the mortgage, for satisfaction of which execution may be issued at any time upon any other property which may be found belonging to the responsible party.

REDEMPTION: Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto. And contain: 1. A particular description of

the real property sold; 2. The price bid for each distinct lot or parcel; 3. The whole price paid; 4. If the property is subject to redemption, the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated. Real property may be redeemed from the purchaser at the foreclosure sale at any time within twelve months after such sale, by paying the purchase price, with one per cent. per month in addition, up to the time of redemption, together with any assessment or taxes paid thereon by the purchaser and deducting any rent he may have received during the term. Any charges for necessary care and maintenance of the property, expended by the purchaser, would also be allowed him, but he would not be allowed to make improvements or add other burdens which would make redemption more difficult, although such improvements might add to the value of the property. (See Chattel Mortgages.)

Name: See Negotiable Instruments. Persons or corporations may have their names changed for good reasons, and by application to the Superior Court of the County where such person resides.

Any person in whom the title of real estate is vested who shall afterwards from any cause have his or her name changed must in any conveyance of real estate so held set forth the name in which he or she derives title to such real estate.

FICTITIOUS NAME: See Negotiable Instruments, ¶3099, 3163, 3195, 3196, 3211.

Except as otherwise provided in the next section every person transacting business in this state under a fictitious name and every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which his or its principal place of business is situated, a certificate, stating the name in full and the place of residence of such person and stating the names in full of all the members of such partnership and their places of residence. Such certificate must be published once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper in an adjoining county. The certificate filed with the clerk as provided in preceding section must be signed by the person referred to in it or by the partners, as the case may be, and acknowledged before some officer, authorized to

take the acknowledgment of conveyances of real property. Where a business is hereafter commenced by a person under a fictitious name or a partnership is hereafter formed, the certificate must be filed and the publication designated in that section must be made within one month after the commencement of such business, or after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership. No person doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as partners contrary to the provisions of this article, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required. The following names have been determined by our Supreme Court to be fictitious: Abrams Bros.; P. H. Murphy and Son; Nicholson and Co.; J. D. Byers & Co. The following are not: The San Francisco Call; Kohler Steam Laundry; Pendleton and Williams.

Necessaries of Life: See Actions, ¶.....; Husband and Wife; Contracts. Food, clothing, house rent, expense of burial, medicine, medical attendance, are all necessaries in every case; but what may be considered "necessary" will vary with the rank, wealth, position and fortune of the husband—but it must never go to extremes (such as the wife of a street laborer ordering silk underwear, when she has never been accustomed to it).

Negotiable Instruments: See Checks; Warehouseman; Receipts; Bill of Lading.

Acceptance: ¶3213 to 3232, 3242, 3243, 3244, 3262, 3263, 3265C, 3265D.

Acceptance for Honor: ¶3242 and following.

Acceptor: ¶3143, 3144, 3110.

Accommodation: ¶3110, 3145, 3196.

Accord and Satisfaction: ¶3200.

Agent: ¶3100, 3101, 3102, 3103, 3117, 3150, 3172.

Allonge: ¶3112.

Alteration of Instrument: ¶3204, 3206.

Assignment: ¶3206, 3265E.

Assignment for Benefit of Creditors: ¶3182, 3226, 3239.

Assumed Name: ¶3099.
Bank: ¶3168, 3265E.
Bankrupt: ¶3182, 3201.
Bill of Exchange: ¶3192, 3199, 3207, 3210, 3211, 3233.
Bills in a Set: ¶3259, 3260, 3261.
Cancellation: ¶3204.
Cashier: ¶3123.
Certification: ¶3265C.
Certificate of Deposit: ¶3090.
Confession of Judgment: ¶3086.
Check: ¶3205, 3265 and following.
Children: ¶3103.
Collateral Security: ¶3086.
Consideration: ¶3105, 3106, 3109, 3136.
Corporation: ¶3103.
Date: ¶3093, 3094.
Defenses: ¶3138, 3139.
Defect: ¶3136, 3137.
Delivery: ¶3097, 3111, 3115, 3148.
Demand: ¶3088, 3152, 3265A.
Drawee: ¶3142, 3163, 3196, 3208, 3209, 3211, 3213, 3217, 3218, 3219, 3222, 3225, 3226, 3228, 3229, 3237.
Drawer: ¶3110, 3142, 3145, 3151, 3160, 3170, 3211, 3195, 3212, 3223, 3224, 3228, 3231, 3232, 3233, 3234, 3239, 3244, 3265.
Dishonor: ¶3170, 3190, 3192, 3195, 3196, 3214, 3219, 3222, 3229, 3230, 3233, 3237, 3239, 3246, 3251.
Discharge: ¶3170, 3200, 3201 and following, 3264, 3265D.
Duress: ¶3136.
Fictitious Names: ¶3099, 3163, 3195, 3196, 3211, 3229.
Foreign Bill of Exchange: ¶3207, 3210, 3211, 3233.
Forgery: ¶3104.
Fraud: ¶3136.
Grace, Days of: ¶3166, 3217.
Holder for Value: ¶3107, 3108, 3132 and following.
Holder in Due Course: ¶3133, 3134.
Holidays: ¶3166, 3227, 3266c.
Indorsement: ¶3103, 3105, 3110, 3111, 3112 to 3131 inclusive, 3144, 3145, 3146, 3147, 3148, 3149, 3151, 3161, 3170, 3196, 3201, 3205, 3212, 3225, 3231, 3232, 3233, 3239, 3261, 3265, 3265d.

Infirmity: ¶3137, 3136.
Inland Bill of Exchange, ¶3210, 3211.
Insolvent: ¶3182, 3139.
Interest, ¶3083, 3098.
Judgment: ¶3086.
Mail: ¶3186, 3187, 3188.
Maker: ¶3141, 3142, 3144, 3145, 3110.
Maturity: ¶3166.
Mortgages: ¶3083.
Name: ¶3099.
Notary Public: ¶3253, 3254, 3258.
Negotiation: ¶3111.
Negotiability: ¶3082, 3083, 3111, 3112, 3128, 3131, 3133, 3134, 3136.
Note: ¶3083, 3205, 3265, 3170.
Notice: ¶3137, 3175, 3176, 3177, 3178, 3179, 3180, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198.
Partner: 3158, 3159, 3180, 3181, 3209.
Payee: ¶3142, 3143, 3149.
Payment: ¶3169, 3264, 3153, 3154,
Payment of Honor: ¶3252 and following.
Presentment: ¶3151, 3152, 3292, 3214, 3224, 3225, 3226, 3229, 3232, 3234, 3237, 3249, 3250, 3265b.
Prima Facie: ¶3092, 3095, 3105, 3123, 3140.
Principle Agent: ¶3100, 3101, 3102, 3103.
Procuration: ¶3102.
Promissory Note: ¶3083, 3205, 3211, 3265, 3170.
Protest: ¶3192, 3199, 3233 and following, 3248, 3251.
Reasonable Time: ¶3266b.
Referee, in Case of Need: ¶3212, 3213, 3248, 3250.
Saturday: ¶3166, 3227.
Sight: ¶3247.
Signature: ¶3082, 3095, 3099, 3100, 3101, 3102, 3103, 3112, 3124, 3136, 3145, 3204.
Sunday: ¶3166, 3266c.
Subrogation: ¶3256.
Supra Protest: ¶3242, 3245, 3252, 3253, 3257.
Time: ¶3167.

Tender: 3131.

Title: ¶3136.

3082. An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) Must contain an unconditional promise or order to pay a sum certain in money; (3) Must be payable to order or to bearer; and (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Negotiability is that quality in bills, notes or checks which renders them transferable from one person to another by indorsement; which enables them to pass from hand to hand like money, so as to give the holder in due course the right to hold the instrument and collect the sum payable for himself, free from defense.

The instrument must be in writing. "Writing" includes handwriting, typewriting and printing. It may be written with a pencil or with ink, but the permanence and better security of ink make it preferable. It might be possible that a drawee would be upheld in refusing to pay an instrument written or indorsed in pencil because of the facility with which it might be altered.

The proper place for the signature is at the bottom or end of the instrument. If placed elsewhere, in such position as to create a doubt as to whether the signer intended to sign as maker, acceptor or indorser, he is to be deemed an indorser, which makes a lot of difference. The signature may be written in ink or pencil, or it may be typewritten or even printed, but in the latter cases it cannot prove itself, and must be shown to have been adopted by the party as his signature. Bonds and other evidences of indebtedness signed by a printed facsimile of the maker's autograph, where adopted by the maker for that purpose, are properly signed.

In case of a bill or check there must be a positive order to pay the same—a command, not a request. If a note, a definite promise to pay in any event, without any condition or stipulation which would render the payment uncertain or dependent upon some contingency. Certain statements and instructions, however, are allowable, as not being conditional. See section 3084.) As to the language of the promise, other words might do but "I promise to pay" is better than phrases of doubtful force as sometimes used; such as "I agree to

pay," etc., being direct, positive and specific. But if from the words of the instrument may be collected an unconditional promise to pay it, it may be regarded as an unconditional promissory note.

The amount to be paid must be definitely stated, and must be payable in money only. The kind of money may be stipulated or not. "Payable in New York funds or their equivalent" held not to be money. Again, "Payable in current funds" has been. The best definition of money is probably those species of coins and notes designated by the government as legal tender for the payment of debts, both public and private. See also section 3083.

The time when the instrument becomes due and payable must be definitely ascertainable from its language. (This is further explained under section 3085.)

Must be payable to order or to bearer. (See sections 3088, 3089, 3090.)

The name of the drawee should be written in the instrument in order to ascertain who is to be bound. But it will be sufficient if the name of the drawee is indicated with reasonable certainty. Thus, an order addressed to the "Agent of the Mutual Insurance Corporation" at Fresno would probably be sufficient identification in case the maker was not aware of the name of the said agent.

3083. The sum payable is a sum certain within the meaning of this act, although it is to be paid—(1) With interest; or (2) By stated installments; or (3) By stated installments, with a provision that upon default in payment of any installment or of interest the whole shall become due; or (4) With exchange, whether at a fixed rate or at the current rate; or (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

The further promise to pay interest or exchange does not detract from the element of certainty, inasmuch as the amount to be so added is capable of definite ascertainment and is therefore certain.

There are many forms of instruments, which are all right so long as they observe the legal requirements, and the language employed will make no difference. The forms which follow in this work are of accepted phraseology, in accordance with the terms of the statute. (It should be understood that in the following sample forms, the names, dates and amounts are fictitious, and, when using them, the names, dates and amounts should be inserted in accordance with each particular case.)

per annum, payable monthly on deferred payments. Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, or in any installment of the principal when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

HIRAM JACKSON.

It is not necessary to describe in the note the property mortgaged, but the dates and amounts and other items of the two instruments should correspond exactly, and the mortgage should refer to the note for which it is given as security, for purposes of identification. A mortgage note can not be negotiated apart from the mortgage of which it forms a part.

A stipulation in a mortgage requiring the mortgagor to pay, in addition to the principal debt and interest such sums as the mortgagee may be required to incur for insurance, taxes, assessments and charges on the land, etc., is not imported into the note secured by the mortgage so as to render it non-negotiable.

(PROMISSORY NOTE SECURED BY MORTGAGE UPON
REAL OR PERSONAL PROPERTY.)

\$3000.00

Sacramento, July 4, 1950.

Three years after date, for value received, I promise to pay to Philip Baker, or order, at the Tenth National Bank, Los Angeles, Cal., the sum of three thousand dollars, with interest from July 4, 1950, until paid, at the rate of seven per cent. per annum payable yearly; should the interest not be so paid, it shall become part of the principal, and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States. This note is secured by a mortgage upon real (or personal) property.

HIRAM JACKSON.

The stipulation providing for attorney's fees and costs of collection if the instrument be not paid at maturity does not affect its negotiability. Such stipulations can never go into effect if the terms of payment are complied with. They are only enforceable after dishonor, and do not affect the certainty of the amount to be paid if paid according to its terms; being in fact simply incidental to the main engagement, intended to insure its performance or to compensate for trouble and expense entailed by its breach. The attorney's fee is due if the unpaid note is placed in his hands for collection, although no suit be brought. Where the amount is left blank it is tantamount to a promise to pay a reasonable amount as attorney's fee.

(PROMISSORY NOTE WITH ATTORNEY'S FEES AND
COSTS OF COLLECTION.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date I promise to pay to Henry Harrison, or order, one hundred dollars, with interest at seven per cent. per annum, together with an additional sum of five per cent. of the principal as attorney's fees and costs of collection should it be necessary to bring an action to enforce payment hereof.

HIRAM JACKSON.

3084. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with—(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Where the instrument is otherwise in correct form, and payable at all events it may indicate that it is to be paid out of a particular fund; but if to be paid only out of a particular fund it is conditioned and therefore nonnegotiable. The following are negotiable, because there is a positive order to pay a definite sum, although to be charged up to a particular fund: "Pay Dee, or order, One Hundred dollars, and take the same out of my share of the grain when sold." "Pay Dee, or order, One Hundred Dollars on account of the money advanced by me for the Golden State Building Company."

The following are not negotiable, because payable out of a particular fund, which fund may never exist, or may be inadequate: "Pay Dee, or order, one hundred dollars out of the money in your hands belonging to the Golden State Building Company." "Pay Dee, or order, one hundred dollars out of the money arising from the sale of my land." Those forms of contract notes usually given in payment of goods and chattels are held not to be conditioned as affecting their negotiability. Thus a provision in a note that is given in payment for a piano, "which piano shall be and remain the property of the seller until the amount secured hereby is paid," is held merely to be a statement of the transaction which gives rise to the instrument, and is valid and permissible.

(PROMISSORY NOTE, CONTRACT FORM, WITH
STATEMENT OF TRANSACTION WHICH GIVES RISE
TO THE INSTRUMENT.)

\$300.00

Sacramento, July 4, 1950.

Ninety days after date, for value received, I promise to pay to the order of C. E. Capitol, three hundred dollars, payable in gold coin of the United States, with interest thereon in like coin, from date until paid, at the rate of ten per cent. per annum. And in case a suit or action is instituted to collect the money above mentioned, or any portion thereof I promise to pay ten per cent. on the sum first aforesaid, additional to said amount, as attorney's fees and costs of collection in such suit or action. The above note is given upon and for the consideration that the said C. E. Capitol has agreed and promises that upon the payment of said note principal and interest, at maturity (time being the essence of this contract) he will sell and transfer to the undersigned, at the price of said principal and interest, the Bradford Piano which the said C. E. Capitol has this day entrusted to the care of the undersigned. It is admitted and agreed that the said piano, so entrusted, is the property of said C. E. Capitol, and the legal title thereof is in said C. E. Capitol, and shall remain in him until he shall make the aforesaid sale and transfer, after the principal and interest aforesaid shall be paid.

HIRAM JACKSON.

3085. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—(1) At a fixed period after date or sight; or (2) On or before a fixed or determinable future time specified in it; or (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect. A note payable "on or before" a stated date is nonnegotiable. A note may be made payable upon the happening of an event if the event is sure to happen, sooner or later. Thus, a note payable upon the death of the maker is negotiable because the event is sure to happen. A promise to pay by a minor when he becomes twenty-one years of age is not negotiable, because payable on a contingency which may never happen; he might die before reaching that age. A note payable "as soon as this year's fruit crop is harvested" is held nonnegotiable because of a contingency which might never happen because of possible destruction of the crop before harvest time. Even the harvesting without mishap would not cure the defect.

3086. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of a loan instrument otherwise negotiable is not affected by a provision which—(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or (4) Gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.

It is an indispensable requisite of a negotiable instrument that it be payable in money only. If payable in work, or in cotton, or in gold ore, or in Liberty bonds, or whatsoever, in addition to or instead of money which is legal tender, it loses its character as negotiable paper and becomes merely a special contract. The instrument may provide for collateral security and the sale of it; for confession of judgment by the payee or holder for the maker; and may waive the law of exemptions, homestead or other protective statutes. Paragraph (4) however, seems to validate a provision in the instrument

giving the holder the option of requiring something else to be done instead of the payment of money (not in addition to it); but such provision must in no manner detract from the absolute necessity for payment if the holder so elects.

(PROMISSORY NOTE WITH COLLATERAL SECURITY.)

\$10,000

Sacramento, July 4, 1950.

Thirty days after date, for value received I promise to pay to Messrs. Dodson & Company or order, the sum of ten thousand dollars with interest at the rate of seven per cent. per annum from date until paid, interest payable monthly, and if not so paid to be compounded monthly and bear the same rate of interest as the principal; and should the interest not be paid monthly, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this Note. Should suit be commenced to enforce the payment of this Note, I agree to pay an additional reasonable sum as attorney's fees and costs of collection in such suit. Principal and interest payable in gold coin of the United States.

HIRAM JACKSON.

As collateral security for the payment of the above note and the interest as stated therein and expenses which may accrue thereon I have deposited with Messrs. Dodson & Company the following personal property of which I am sole owner, to wit: one thousand shares of The Water Development Company, as evidenced by certificate thereof numbered 46 to 90 inclusive par value \$100.00 per share. And should the said note or any part thereof, or the interest that may grow thereon, remain due and unpaid at maturity according to the tenor of said note, I hereby irrevocably authorize and empower said Dodson & Company or their heirs, executors, administrators or assigns, to sell and dispose of the above mentioned personal property or any part thereof, at public or private sale, without any previous notice to me of any such sale, and from the proceeds arising therefrom to pay the principal and interest and all charges that shall then be due, and the costs of sale, together with a reasonable attorney's fee, and

the balance, if any, to pay over to me or my representatives upon demand. In case of deterioration of any of the above securities, or fall in the market value of the same I hereby promise and agree on demand to reduce the amount of said debt, or to increase the security in proportion to such deterioration or decrease of value, in default of which this note is to be considered due under the above stipulation. On the payment of the above note and interest according to the terms of the former, and all charges, this agreement is to be void and the above named securities to be returned to me. Presentment, protest, and notice of protest, are hereby waived.

HIRAM JACKSON.

Dated July 4, 1950.

The following is the form of judgment note generally in use where such note is permissible. It is a very severe instrument, and is prohibited in New York and some other states, although a clause confessing judgment in no wise destroys negotiability. Whether such form of note would be legal in this state there is as yet no authority.

(PROMISSORY NOTE WITH CONFESSION OF JUDGMENT.)

\$100.00

Sacramento, July 4, 1950.

One year after date, I promise to pay to the order of John Jones the sum of one hundred dollars with interest at six per cent., and I hereby authorize any attorney at law in the United States to appear before any Justice of the Peace, or in any court of record, after this note is due, and waive the service of summons and confess judgment against me in favor of the holder of this note for the amount which shall then be due and unpaid thereon, together with interest, attorney's fees and costs.

HIRAM JACKSON.

(PROMISSORY NOTE WITH WAIVER OF BENEFITS.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date I promise to pay to Henry Harrison, or order, one hundred dollars, with interest at seven per cent. per annum, hereby also

agreeing to waive the benefits of the exemption and homestead laws of this state, presentment, protest, and notice of dishonor.

HIRAM JACKSON.

3087. The validity and negotiable character of an instrument are not affected by the fact that—(1) It is not dated; or (2) Does not specify the value given or that any value has been given therefor; or (3) Does not specify the place where it is drawn or the place where it is payable; or (4) Bears a seal; or (5) Designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

(PROMISSORY NOTE PAYABLE IN PARTICULAR
KIND OF MONEY.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date I promise to pay Henry Harrison, or order, one hundred dollars, with interest payable in gold coin of the United States.

HIRAM JACKSON.

3088. An instrument is payable on demand (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or (2) In which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. A note payable on demand or sight after date is a demand note. Presentment need not be made the day after date but within a reasonable time in order to hold an endorser.

(PROMISSORY NOTE PAYABLE ON DEMAND.)

\$100.00

Sacramento, July 4, 1950.

For value received, on demand after date I promise to pay to Henry Harrison, or order, one hundred dollars, with interest at seven per cent. per annum.

HIRAM JACKSON.

3089. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or to his order. It may be drawn payable to the order of—(1) A payee who is not maker, drawer, or drawee; or (2) The drawer or maker; or (3) The drawee; or (4) Two or more payees jointly; or (5) One or some

of several payees; or (6) The holder of an office for the time being. Where the instrument is payable to order the payee must be named or otherwise indicated in it with reasonable certainty.

3090. The instrument is payable to bearer—(1) When it is expressed to be so payable; or (2) When it is payable to a person named in it or bearer; or (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or (4) When the name of the payee does not purport to be the name of any person; or (5) When the only or last indorsement is an indorsement in blank.

The words "bearer," "or order," "or bearer" are words of negotiability without which or other equivalent words the instrument will not possess that quality. Thus, an instrument payable to John Bright unless followed by "or order" "or bearer" is not negotiable. Certificate of deposit payable to "John Doe or his assigns" is not negotiable. Note endorsed in blank by payee is payable to bearer, regardless of subsequent endorsements. Also is payable to bearer where last endorsement is in blank, regardless of previous endorsements.

3091. The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

3092. Where the instrument or an acceptance of any indorsement on it is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

3093. The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title to it as of the date of delivery.

The postdating of an instrument has no effect on its negotiability. It may be negotiated and transferred with like effect as other instruments, either before or after it becomes due, except that payment cannot be demanded until the day of its date.

3094. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert in it the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a

wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

See Alteration of Instruments.

3095. Where the instrument is wanting in any material particular, the person in possession of it has a *prima facie* authority to complete it by filling up the blanks in it. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party to it before its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

3096. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed on it before delivery.

3097. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect to it. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery of it by all parties before him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears on it, a valid and intentional delivery by him is presumed until the contrary is proved.

3098. Where the language of the instrument is ambiguous or there are omissions in it, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue of it; (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued; (4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail; (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election; (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser; (7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable on it.

(Promissory Note With Joint and Several Liability.)

LIABILITY.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date I promise to pay to Henry Harrison, or order, one hundred dollars, with interest at seven per cent. per annum.

WILLIAM WALTERS. HIRAM JACKSON.

The above note when signed by one person only is a several note for which the signer alone is liable. But where signed by two or more persons, although reading "I promise to pay," each signer becomes severally liable for the whole amount of the note independent of the others. The holder can sue all the makers together or each one separately. And in case of death before payment it becomes a charge upon the estate of the deceased.

A better form of note, however, with joint and several liability, is the following:

(JOINT AND SEVERAL NOTE.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date, I, We, or either of us promise to pay to Henry Harrison, or order,

one hundred dollars, with interest at seven per cent. per annum.

WILLIAM WALTERS. HIRAM JACKSON.

In the form which follows the wording is the same as the above, except "We promise to pay" is substituted for "I promise to pay." This makes it a joint note. Where signed by two or more persons the obligation rests upon all together to pay it. And while each is liable for the whole amount of the note, they cannot be sued separately, but must be sued all together; except, that if it can be shown that each of the makers has received some benefit from the proceeds of the note, either in the past or in the present, then the note may be construed to be joint and several, and the makers may be sued either all together or separately. There is also this distinction respecting a joint note: If one of the makers dies, his liability ceases and his estate cannot be sued upon it; the survivor alone is responsible, and in the event of his death, also, his estate is, if he be the final survivor.

(JOINT PROMISSORY NOTE.)

\$100.00

Sacramento, July 4, 1950.

For value received, six months after date WE promise to pay to Henry Harrison, or order, one hundred dollars, with interest at seven per cent. per annum.

WILLIAM WALTERS. HIRAM JACKSON.

3099. No person is liable on the instrument whose signature does not appear on it, except as herein otherwise expressly provided. But one who signs in a Trade or Assumed Name will be liable to the same extent as if he had signed in his own name.

A trade name, such as "Richard Roe & Company," is as effective if written that way as it would be if followed by the name of the writer, as "Richard Roe & Company, by Richard Roe."

3100. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

3101. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character,

without disclosing his principal, does not exempt him from personal liability.

A signature as follows: "Richard Roe, by Sally Green, agent," holds Richard Roe but not Sally Green. But if she signed simply "Sally Green, agent," without disclosing whom she was agent for, she would be liable alone.

The signers are personally liable in the following signature: "W. H. Brown, President; J. B. Smith, Secretary," with the seal of the corporation impressed in the note. The name of the corporation should have preceded the signature; it would then be liable and not the signers.

A check had the name of the company printed at the top. It was signed "B. Hartley, president, Frank Davids, secretary." The company name appeared nowhere else. The president and secretary were personally liable.

The general rule seems to be that one who signs as "Trustee" is personally liable, unless the instrument disclosed the principal. Where defendant signed note as "trustee" the principal must be disclosed on the face of the paper in order to relieve the maker from liability to a holder in due course; but as between maker and payee, if the payee knows the nature and object of the trust, and the maker was acting in his proper capacity, he is not personally liable to payee, although none of such information appears on the note.

3102. A signature by "procuration" operates as notice that the agent has but limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

3103. The indorsement or assignment of the instrument by a corporation or by an infant passes the property in it, notwithstanding that from want of capacity the corporation or infant may incur no liability on it.

3104. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge for it, or to enforce payment thereof against any party to it, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

3105. Every negotiable instrument is deemed *prima facie* to have

been issued for a valuable consideration; and every person whose signature appears on it to have become a party to it for value.

3106. Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

3107. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such before that time.

3108. Where the holder has a lien on the instrument, arising from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

3109. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

The law presumes consideration for an instrument, but this presumption is not absolute as between the parties to the instrument, and may be rebutted as a matter of defense if sued upon. But the presumption is transmitted into a conclusive and absolute presumption where the instrument has passed into the hands of a bona fide holder in due course who has purchased it for value before maturity, without notice of any defect; in such case, the want of consideration cannot be set up as a defense against payment. It is not a good defense that one of two joint makers signed a note with the promise that the payee would get the payment out of the other signer, who was paid the money.

3110. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value for it, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

The mercantile credit of parties is frequently loaned to others by placing their names as maker, indorser, drawer or acceptor upon an instrument without consideration for so doing for the purpose of raising money by the party accommodated. Such instruments are called accommodation paper. The want of consideration may be shown as between the accommodator and the accommodated party,

but when the instrument has passed into the hands of a third party for value, and in the usual course of business, it cannot be so shown. Sometimes the accommodating party is paid a fee for lending his name and credit. "Without receiving value therefor" means, without receiving value for the paper itself without reference to any consideration he may have received for lending his name. Accommodation instrument negotiated for the first time after maturity cannot be enforced against accommodating party, even though purchased for value. It is doubtful if a corporation has the right to endorse a note as accommodation party, unless so expressly permitted by its charter.

3111. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder of it. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. If instrument be payable "to bearer" it is sufficient to simply hand it over to the person to whom it is to be transferred, without the necessity for indorsement. Where payable to a certain person or his order his indorsement is necessary before turning it over. When thus delivered it may be said to be negotiated.

3112. The indorsement must be written on the instrument itself or upon a paper attached to it. The signature of the indorser, without additional words, is a sufficient indorsement.

The proper place for an endorsement is on the back of the instrument. But it may be written any place upon it. If written upon the back, however, the danger of being construed as other than an indorser is removed. It is not necessary that the indorsement should be on the identical paper on which the instrument is written; whenever it is inconvenient to write upon the back of an instrument the contract between the parties it may be written upon another paper and attached to it with like effect. This is known as an allonge.

Where a torn instrument has been pasted upon another piece of paper the indorsement may be made upon such paper. Stamping the name of the indorser upon the back of the instrument with a rubber stamp, with his authority and with intent to indorse the instrument, is a valid indorsement, but does not prove itself like a handwritten signature.

3113. The indorsement must be an indorsement of the entire in-

strument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorseees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Take a note or check for \$500. Suppose the payee should desire to indorse \$250 to one person and \$250 to another. That can not be done, for the indorsement must be for the whole amount called for on the face of the instrument. Therefore, neither could only a portion of the \$500 be indorsed. But if \$250 had been paid on the instrument, then the remainder could be indorsed.

3114. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

3115. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

A special indorsement is also known as an indorsement in full. It makes the instrument payable to a particular person only, or to him or his order. "Pay to Hiram Jackson, or order," is a special indorsement, making the instrument payable to Hiram Jackson or his order only. His indorsement is necessary before it can be passed further along. He in turn can indorse to another person, making the instrument still special, or he can simply write his name; it is then an indorsement in blank, which makes it payable to bearer or the holder. An indorsement in blank is simply writing the name of the indorser on the back of the instrument. It then passes freely from hand to hand like currency, being payable to any proper bearer or holder. Notes indorsed in blank are transferable by simple delivery, and one having them in possession is presumably the owner, and is authorized to transfer a good title whenever delivered to another.

3116. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. An instrument so altered is not restrained by it and is still payable to bearer, except that the holder converting the blank indorsement

into a special indorsement is only liable to parties making title through his indorsement.

8117. An indorsement is restrictive, which either—(1) Prohibits the further negotiation of the instrument; or (2) Constitutes the indorsee the agent of the indorser; or (3) Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

An indorsement to "Pay to Hiram Jackson only" is a restrictive indorsement and puts an end to further negotiation of the paper. "Pay to Bradstreets for collection" is also a restrictive indorsement. The indorsee is thus made merely an agent of the indorser to receive the money and pay over the proceeds; he cannot sell or dispose of the instrument for his own benefit, nor can he hold the indorser liable to himself. "Pay to So and So in trust for So and So," or "For account of So and So" are other examples of restrictive indorsements.

8118. A restrictive indorsement confers upon the indorsee the right— (1) To receive payment of the instrument; (2) To bring any action on it that the indorser could bring; (3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

8119. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

A qualified indorsement passes the title to the instrument but does not guarantee its payment. "Without recourse pay to Stanley Waterman, Hiram Jackson." This qualified indorsement in effect says: "I indorse this instrument to you, but I will not be responsible for the financial standing of the other parties to it. I do not warrant that it will be paid at maturity, nor if not paid by the other parties to it that I will pay it." Such indorsement without recourse does not throw any discredit upon the instrument, nor have any effect upon its negotiability. While the qualified indorser does not guarantee the payment of the instrument, he does, however, guarantee that it is in all respects genuine and what it purports to be; that he has a good title to it; that all prior parties had capacity

to contract; that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. "I hereby transfer all my right, title and interest in and to the within note," is a qualified indorsement.

3120. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds of it, subject to the rights of the person indorsing conditionally.

A conditional indorsement is one where the indorser adds some condition to his indorsement. Example: "Pay to Jonathan Harris upon completion of his contract to build my barn upon which he is now working" is a conditional indorsement. If such a condition appeared upon the face of the instrument it would render it non-negotiable. A condition attached to an indorsement is valid and does not affect the negotiability of the instrument so indorsed.

(SPECIAL INDORSEMENT.)

"Pay to Daniel Clarke, or order. HIRAM JACKSON."

(BLANK INDORSEMENT.)

"HIRAM JACKSON."

(CONDITIONAL INDORSEMENTS.)

"Pay to Frances Coolidge upon her 18th birthday.

HIRAM JACKSON."

"Pay to Goldstein & Abrams, unless before maturity
I notify you to the contrary. HIRAM JACKSON."

(RESTRICTIVE INDORSEMENT.)

"Pay to Oliver Perry only. HIRAM JACKSON."

(INDORSEMENT FOR COLLECTION.)

"Pay to Tenth National Bank for collection.

HIRAM JACKSON."

(INDORSEMENT WITHOUT RECOURSE.)

"HIRAM JACKSON, without recourse."

(INDORSEMENT BY AGENTS.)

"HIRAM JACKSON, as agent for DAVID HOOLEY."

(INDORSEMENT WAIVING PROTEST.)

"HIRAM JACKSON, waiving protest."

(GUARANTY INDORSEMENT.)

**"For value received, I hereby guarantee the payment of this note, together with costs and attorney's fees incurred in collection.
HIRAM JACKSON."**

3121. Where an instrument, payable to bearer, is indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. This would seem to indicate that where an instrument originally payable to bearer, or so made by blank indorsement, it may still be passed from holder to holder by mere delivery without the signature of the special indorsee. The liability of the special indorser is confined to those who acquire title through and by reason of his special indorsement.

3122. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

3123. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

This section overrules many former decisions. Under this section an instrument made payable to or indorsed to the "cashier" or "treasurer" of the Broadway Trust Company is declared to be payable to the company, and may be indorsed by either the company or by said cashier or treasurer or other fiscal officer.

3124. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as described in it, adding his proper signature, if he wishes.

Where the check is made payable to "William Brown," and the payee intended spells his name "William Browne," he may indorse it "William Brown," as written in the instrument, and that will suffice, or he may first indorse it "William Browne." The latter method is good practice, and is in fact required by careful payors or indorsees.

3125. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negate personal liability.

3126. Except where an indorsement bears date after the ma-

turity of an instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

3127. Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

3128. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

3129. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are by it relieved from liability on the instrument.

3130. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had in it, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

An instrument transferred without indorsement is treated as a chose in action assigned to the purchaser; a contract on which the assignee may bring an action in his own name to enforce, but subject to all the equities and defenses existing against the previous holder.

3131. Where an instrument is negotiated back to a previous party such party may, subject to the provisions of this title, reissue and further negotiate the same. But he is not entitled to enforce payment of it against any intervening party to whom he was personally liable.

3132. The holder of a negotiable instrument may sue on it in his own name and payment to him in due course discharges the instrument.

3133. A holder in due course is a holder who has taken the instrument under the following conditions: (1) That it is complete and regular upon its face; (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (3) That he took it in good faith and for value; (4) That at the time it was negotiated to him he had

no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

A holder in due course may be said to be a bona fide holder, or holder in good faith. He must have acquired the paper in good faith from his predecessor. If his acquisition of the paper be in any respect fraudulent he cannot claim the position of a bona fide holder, or holder in due course. Where the holder in due course acquires the instrument in conformity with the above rules he can enforce payment of it in full against all parties liable on it. A note providing that any delinquency in the payment of interest "shall cause the whole note to become immediately due and collectible" is made overdue by the failure to pay the interest when due, and a subsequent taker cannot be a holder in due course. A note payable one day after date is not overdue at any time on the day after its date.

3184. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (See 3186.)

Repeals the former rule making demand note overdue immediately for purposes of transfer. A reasonable time is allowed before a demand instrument can be declared overdue. For what is a "reasonable time" see definition.

3185. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid for it, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

3186. The title of a person who negotiates an instrument is defective within the meaning of this title when he obtained the instrument, or any signature to it, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

3187. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

3188. A holder in due course holds the instrument free from

any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount of it against all parties liable on it.

There are two classes of defenses—personal and real. Personal defenses are those that grow out of the conduct of a particular person in regard to the instrument, and may be enumerated as: 1. Alteration; 2. Simple fraud; 3. Duress; 4. Want or failure of consideration; 5. Illegality, unless declared void by statute; 6. Payment or renunciation, or release before maturity. Although these defenses are available by prior parties among themselves, the holder in due course is free from them, for none of them can be set up against his title. But with real defenses it is different. Real defenses are such as attach to the instrument itself, and which are good against all persons, therefore against the holder in due course also. They are founded upon a right, good against all the world. These absolute defenses are five in number: 1. Incapacity to contract; 2. Downright illegality of contract; 3. Forgery; 4. Statute of limitations; 5. Duress, where amounting to forgery. The person from whom it is sought to recover may set up any of these defenses; no one is proof against them, not even the holder in good faith.

3139. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties before to the latter.

If the holder of a negotiable instrument has transferred it and afterward re-acquired it, he is remitted to his old position, as if everything since his transfer had been wiped out, unless his title was defective, in which case he could not better it by selling the instrument to a holder in due course and buying it back again.

3140. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument before the acquisition of such defective title.

3141. The maker of a negotiable instrument by making it en-

gages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

3142. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount of it to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

3143. The acceptor by accepting the instrument, engages that he will pay it according to the tenor of his acceptance; and admits—
(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) The existence of the payee and his then capacity to indorse.

3144. A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

3145. Where a person, not otherwise a party to an instrument, places on it his signature in blank before delivery he is liable as indorser, in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

The only liability that a regular indorser incurs is to subsequent parties. But one who indorses an instrument before delivery is not a regular indorser. He is called an "irregular indorser," sometimes an "anomalous indorser." His function is usually that of a kindly person who loans his name to fortify the credit of some one less worthy. Formerly his position and liability were difficult and confused. He was sometimes held to be "first indorser," "second indorser," "joint maker," "guarantor," etc. His status is now fixed as an indorser purely, and his liability definitely fixed, being chargeable only after presentment and notice of dishonor.

3146. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—(1) That the instrument is genuine and in all respects what it purports to be; (2) That he has a good title to it; (3) That all prior parties had capacity to contract; (4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

The person negotiating an instrument by simply delivery, without placing his name upon it, and the person negotiating "without recourse" or other qualification, are placed upon the same footing as to the things they guarantee by the act of transfer, except that in the case of delivery without indorsement the guaranty is made. The transferor is liable to no one else. The indorser without recourse, however, is liable to the extent of the guarantee as stated in this section to all subsequent holders.

3147. Every indorser who indorses without qualification, warrants to all subsequent holders in due course—(1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and (2) That the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount of it to the holder, or to any subsequent indorser who may be compelled to pay it.

The general indorser without qualification warrants to all subsequent holders in due course that the instrument is genuine, that he has good title to it, and that all prior parties had capacity to contract. Also (in this respect differing from the guaranty of the transferor by delivery or by qualified indorsement, who simply warrant that they have no knowledge of any fact which would impair the validity of the instrument), the general indorser absolutely guarantees the instrument to be valid and rightfully in existence at the time of his indorsement. In addition he engages to pay the same under the conditions as stated in the last paragraph of the section.

3148. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

3149. As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally.

3150. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section three thousand one hundred forty-seven, unless he discloses the name of his principal, and the fact that he is acting only as agent.

3151. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument by its terms is payable at a special place, and he is able and willing to pay it there at maturity, such liability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Where there is only one person—the maker or drawer—liable on an instrument it is not necessary to present it to him for payment. He is supposed to know when his obligations become due. But where there are indorsers it is different. The contract of the indorser in effect is this: “I will pay this instrument if the other parties liable do not, but it must be presented to them first, and notice of their refusal given to me.” The provisions of the sections which follow apply to instruments where others than the person primarily liable are to be charged.

“But where a promissory note is in the body of it made payable at a particular place it must be presented at that place in order to render the maker liable. (Referring, as stated, to cases where there are indorsers.) But where only the maker is liable, presentment for payment is unnecessary in order to charge him whether the instrument is payable on time or on demand, although it is made payable at a particular place.”

Where an instrument is payable at a certain bank or other designated place, if the funds are there for that purpose it is equivalent to a tender of payment and releases the liable party if he keeps his tender good, except, of course, as to a holder in due course.

3152. Where the instrument is not payable on demand, presentment must be made on the day it falls due, Where it is payable on

demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation of it.

"Where the instrument is payable on demand, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. If it be not so presented the indorser is discharged."

3153. Presentment for payment, to be sufficient, must be made—
(1) By the holder, or by some person authorized to receive payment on his behalf; (2) At a reasonable hour on a business day; (3) At a proper place as herein defined; (4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

3154. Presentment for payment is made at the proper place—
(1) Where a place of payment is specified in the instrument and it is there presented; (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented; (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment; (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

3155. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

3156. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

The person to make payment has until the close of banking hours of the bank where instrument is made payable in which to pay it, and if before the close of such hours he deposits money enough to pay it, a demand earlier in the day is premature, and not sufficient presentment.

3157. Where a person primarily liable on the instrument is dead,

and no place of payment is specified, presentment for payment must be made to his personal representatives if such there be, and if, with the exercise of reasonable diligence, he can be found.

3158. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

3159. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

3160. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

3161. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

3162. Delay in making presentment for payment is excused when delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

3163. Presentment for payment is dispensed with—(1) Where after the exercise of reasonable diligence presentment as required by this title can not be made; (2) Where the drawee is a fictitious person; (3) By waiver of presentment, express or implied.

3164. The instrument is dishonored by nonpayment when—(1) It is duly presented for payment and payment is refused or can not be obtained; or (2) Presentment is excused and the instrument is overdue and unpaid.

3165. Subject to the provisions of this title, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable on it accrues to the holder.

3166. Every negotiable instrument is payable at the time fixed in it without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option

of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. (See 3134.)

3167. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

3168. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

3169. Payment is made in due course when it is made at or after the maturity of the instrument to the holder of it in good faith and without notice that his title is defective.

3170. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser and any drawer or indorser to whom such notice is not given is discharged.

Notice of dishonor is the bringing, either verbally or by writing, to the knowledge of the drawer or indorser of an instrument the fact that it has been presented and not accepted or paid. In addition to the statement of the fact of dishonor the notice should also contain an announcement of the intention to look to the party notified for payment.

3171. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

3172. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

3173. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

3174. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

3175. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable

on it, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

3176. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled by it.

3177. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

3178. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

3179. When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

3180. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

3181. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

3182. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

3183. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this title.

3184. Where the person giving and the person to receive notice reside in the same place, notice must be given in the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) If given at his residence, it must be given before the

of rule
usual hours on the day following; (3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

3185. Where the person giving and the person to receive notice resides in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

3186. Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice notwithstanding any miscarriage in the mails.

3187. Notice is deemed to have been deposited in post office when deposited in any branch post office or in any letter box under the control of the post office department.

3188. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

3189. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or (2) If he live in one place, and have his place of business in another, notice may be sent to either place; or (3) If he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this title, it will be sufficient, though not sent in accordance with the requirements of this section.

3190. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

3191. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

3192. A waiver of protest, whether in the case of a foreign bill

of exchange or other negotiable instrument, is deemed to be a waiver not only of formal protest, but also of presentment and notice of dishonor.

3193. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

3194. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

3195. Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) When the drawee is a fictitious person or a person not having capacity to contract; (3) When the drawer is a person to whom the instrument is presented for payment; (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument. (5) Where the drawer has countermanded payment.

3196. Notice of dishonor is not required to be given to an indorser in either of the following cases: (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument; (2) Where the indorser is the person to whom the instrument is presented for payment; (3) Where the instrument was made or accepted for his accommodation.

3197. Where due notice of dishonor by nonacceptance has been given notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

3198. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

3199. Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.

3200. A negotiable instrument is discharged—(1) By payment in due course by or on behalf of the principal debtor; (2) By payment in due course by the party accommodated, where the instrument is

made or accepted for accommodation; (3) By the intentional cancellation of it by the holder; (4) By any other act which will discharge a simple contract for the payment of money. An instrument is discharged by accord and satisfaction by the receipt of some collateral thing from the maker or acceptor. If the holder chooses to accept a mule instead of the money value of the paper it discharges the obligation; (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

3201. A person secondarily liable on the instrument is discharged

—(1) By any act which discharges the instrument; (2) By the intentional cancellation of his signature by the holder; (3) By the discharge of a prior party. This means discharge by agreement between the parties and not to discharge by operation of law. Thus, the discharge in bankruptcy of the maker of a note does not affect the liability of the other parties on the note. The discharge of an indorser because not notified of dishonor would not discharge other indorsers properly notified. But the discharge or release of an indorser by the holder releases all subsequent indorsers. It is to such discharges that the statute refers—release by agreement where not contrary to law; (4) By a valid tender of payment made by a prior party; (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved. (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

3202. Where the instrument is paid by a party secondarily liable on it, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—(1) Where it is payable to the order of a third person, and has been paid by the drawer; and (2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

3203. The holder may expressly renounce his rights against any party to the instrument, before, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the

instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable on it.

3204. A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature on it appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

3205. Where a negotiable instrument is materially altered without the assent of all parties liable on it, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument ~~has been materially altered~~ and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment of it according to the original tenor.

3206. Any alteration which changes (1) The date; (2) The sum payable, either principal or interest; (3) The time or place of payment; (4) The number or the relations of the parties; (5) The medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

3207. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determined future time a sum certain in money to order or to bearer.

3208. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

3209. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

3210. An inland bill of exchange is a bill which is or on its face purports to be, both drawn and payable within this state. Any other

bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

(INLAND BILL OF EXCHANGE, DRAWN AT SIGHT.)

\$100.00

Sacramento, Cal., July 4, 1950.

At sight pay to Henry Harrison, or order, one hundred dollars, value received and charge to account of

HIRAM JACKSON.

(INLAND BILL OF EXCHANGE, DRAWN AT THIRTY DAYS' SIGHT.)

\$100.00

Sacramento, Cal., July 4, 1950.

Thirty days after sight pay to Henry Harrison, or order, one hundred dollars, value received and charge to the account of

HIRAM JACKSON.

TO MARSHALL & HORN,

Los Angeles, Cal.

(INLAND BILL OF EXCHANGE, DRAWN AT THIRTY DAYS AFTER DATE.)

\$100.00

Sacramento, Cal., July 4, 1950.

Thirty days after date pay to Henry Harrison, or order, one hundred dollars, value received and charge to the account of

HIRAM JACKSON.

TO MARSHALL & HORN,

Los Angeles, Cal.

The above are all drawn and payable within the same state and are therefore inland bills. Foreign bills would have exactly the same form except that they would be drawn in one state or country and payable in another.

3211. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

3212. The drawer of a bill and any indorser may insert on it the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

3213. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be

in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

3214. The holder of a bill presenting it for acceptance may require that the acceptance be written on the bill and, if such request is refused may treat the bill as dishonored.

3215. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

3216. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

3217. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

3218. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

3219. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

3220. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

3221. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

3222. An acceptance is qualified, which is—(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition stated in it; (2) Partial, that is to say, as acceptance to pay part only of the amount for which the bill

is drawn; (3) Local, that is to say, an acceptance to pay only at a particular place; (4) Qualified as to time; (5) The acceptance of some one or more of the drawees, but not of all.

TRADE ACCEPTANCES: These instruments are recent in commercial enterprises and there is no precise law yet devolved. The instrument is a bill of exchange, drawn to order, having a definite maturity, and payable in dollars in the United States. (Foreign trade acceptances are being developed by the Federal Reserve Bank, but are not now—1919—in force). There are two kinds, personal or bank. Personal are those signed by a person, firm or corporation. They differ from a promissory note because they carry no interest, and can cover no obligation except that arising from the sale of goods.

The method in use is this: When a person has sold and delivered goods, wares, or merchandise, he takes the bill to the purchaser, who endorses across the face his name and date upon which he will pay the face of the bill and the word "accepted." The seller takes this bill, thus accepted, to his bank, which will discount it, giving him ready cash for it. The bank is secure, as it has two signatures, which it believes to be financially responsible, and also because it can in turn discount this acceptance with the Federal Reserve Bank in its district.

The use of trade acceptance is of great benefit to the seller of goods, as it makes his sales all cash sales, and enables him to use this cash, instead of having accounts due in 30, 60 to 90 days—as formerly. From time to time the Federal Reserve Bank formulates rules with regard to the use of these instruments.

3223. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented to it.

3224. Presentment for acceptance must be made— (1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the

instrument; or (2) Where the bill expressly stipulates that it shall be presented for acceptance; or (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

3225. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

3226. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person, authorized to accept or refuse acceptance on his behalf; and—(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; (2) Where the drawee is dead, presentment may be made to his personal representative; (3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustees or assignee.

3227. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections three thousand one hundred fifty-four and three thousand one hundred sixty-seven. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

3228. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

3229. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases: (1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment can not be made; (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

3230. A bill is dishonored by nonacceptance— (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this title is refused or can not be obtained; or (2) When presentment for acceptance is excused and the bill is not accepted.

3231. Where a bill is duly presented for acceptance and is not accepted within the prescribed time the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

3232. When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

3233. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

3234. The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify—(1) The time and place of presentment; (2) The fact that presentment was made and the manner thereof; (3) The cause or reason for protesting the bill; (4) The demand made and the answer given, if any, or the fact that the drawer or acceptor could not be found.

3235. Protest may be made by—(1) A notary public; or (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

3236. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

3237. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored

by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

3238. A bill which has been protested for nonacceptance may be subsequently protested for non-payment.

3239. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

3240. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

3241. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars of it.

3242. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable on it may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable on it, or for the honor of the person for whose account the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

3243. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

3244. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

3245. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

3246. The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance; provided, it shall not have been paid by the drawee; and, provided, also, that it shall have been duly presented for pay-

ment and protested for nonpayment and notice of dishonor given him.

3247. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

3248. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

3249. Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity; (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 3186.

3250. The provisions of section 3163 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

3251. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

3252. Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

3253. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

3254. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

3255. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given preference.

3256. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

3257. Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

3258. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

3259. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

(BILLS OF EXCHANGE IN SET.)

TO MESSRS. DODSON & CO., BANKERS, NEW YORK.

A. Ex. for \$10,000. Sacramento, July 4, 1950.

At sight of this first of exchange (second and third unpaid), pay to the order of DOUGLAS BRADLEY & CO. ten thousand dollars in gold coin of the United States.

Value received, and charge to the account of

HUNTLEY & MATSON.

TO MESSRS. DODSON & CO., BANKERS, NEW YORK.

B. Ex. for \$10,000. Sacramento, July 4, 1950.

At sight of this second of exchange (first and third unpaid), pay to the order of DOUGLAS BRADLEY & CO. ten thousand dollars in gold coin of the United States.

Value received, and charge to the account of

HUNTLEY & MATSON.

TO MESSRS. DODSON & CO., BANKERS, NEW YORK.

C. Ex. for \$10,000. Sacramento, July 4, 1950.

At sight of this third of exchange (first and second unpaid), pay to the order of DOUGLAS BRADLEY & CO. ten thousand dollars in gold coin of the United States.

Value received, and charge to the account of

HUNTLEY & MATSON.

3260. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

3261. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser

subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

3262. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

3263. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his signature to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder on it.

3264. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

~~3265. A negotiable promissory note within the meaning of this title is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.~~

3265a. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this title applicable to a bill of exchange payable on demand apply to a check.

3265b. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability on it to the extent of the loss caused by the delay.

If not so presented the drawer is not released from liability unless he has suffered some loss or injury by it, and then only to the extent of the loss or injury by it. If a bank or banker still remains in good credit and is able to pay the check the maker will still be liable to pay it, notwithstanding many months may have elapsed since the date of the check. If the payee of a check neglects to present it within the time allowed by law, and payment is refused because the maker has withdrawn his funds, or stopped payment, or has insufficient funds on deposit at that time, the maker has suffered no loss because of the delayed presentment, and he will be held liable to the holder in an action to recover. But if the holder neglects to make presentment

within proper time, and is unable to collect it when he does present it because of the failure of the drawee in the meantime, then the maker has actually suffered a loss because of the holder's negligence, and in such case is released from further liability (provided, of course, the check would have been paid if presented in proper time). Delay in presentment does not discharge the liability of the maker of a check unless he has sustained a loss thereby. But a different rule applies to an indorser. As between the holder and the indorser the rule is that the indorser is absolutely discharged from any liability whatsoever in case of failure to make presentment in due time. "The maker is the one primarily liable, and prompt presentment and notice of nonpayment might enable the indorser to secure himself. The indorser's liability is conditioned on this being done, and a failure to do so will discharge him, even though presentment in due course would have been unavailing. In default of proper presentment and notice an indorser can be charged only by proof that he knew when he passed the check that there were or would be no funds in bank to meet it." See 3266b.

3265c. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

3265d. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability on it.

3265e. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

The implied contract of the bank is ~~to honor the checks~~ of its depositor when he has ~~sufficient asset~~ in its hands. If it does not fulfill its contract by promptly paying such checks on presentment then it is ~~liable to the depositor and not to the holder~~. If the holder has a grievance because of the bank's refusal to pay, it is against the drawer of the check and not against the bank.

3266a. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

3266b. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instru-

ment, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

The question whether a bill, note or check be presented for payment within a "reasonable time" is a question of law for the court after the facts are ascertained. It may vary according to the particular circumstances of each case. As a general principle "due diligence" must be exercised in the deposit of checks or the prompt demand for payment of negotiable paper, else neglect may result in the discharge from liability of the drawee.

The interpretation of these provisions is left to the discretion of the court. It may be set down as a general proposition that action looking to presentment and collection should be taken within twenty-four hours from receipt of the instrument. There is, however, a stipulation (see section 3152), ~~making an exception in favor of a check, to the effect that presentment will be sufficient if made within a reasonable time after the last negotiation of it.~~ Where a check or bill of exchange payable on demand is promptly presented after its last negotiation the time between the issue of the instrument and the last negotiation does not enter into the computation at all. See 3265b.

3266c. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

3266d. The provisions of this title do not apply to negotiable instruments made and delivered prior to the taking effect of it. In any case not provided for in this title the rules of law and equity including the law merchant shall govern.

By the "Law Merchant" is meant the rules and customs of merchants relating to bills and notes. Many of these customs are centuries old, in the course of time having been given recognition and adopted as the common law relating to negotiable instruments throughout the civilized world; and while at the present time most of the states have negotiable instrument codes, they for the most part are but statutory enactments of the well recognized rules of the Law Merchant, and must be interpreted, when not otherwise provided by express statutory enactment, by its well settled and established principles.

Negotiability: See Negotiable Instruments, ¶3082, 3083, 3111, 3112, 3128, 3131, 3133, 3134, 3136.

Net Container Act is designed to protect purchasers of any commodity within its provisions, against deception as to the quantity or amount of the commodity purchased, and as against the seller shall be strictly construed with a view to effect its objects.

The act is intended to apply to foodstuffs and stuff intended to be used or prepared for use as food for human beings (see **Commercial Feeding Stuffs**), whether to be eaten or drunk—but does not apply to a commodity intended to be used wholly for medicinal purposes.

Whenever any of these commodities are offered or exposed for sale, in containers, the net quantity of the contents of the container shall be plainly and conspicuously marked, branded or otherwise indicated upon the outside or on top, as a label or tag attached to it.

The designation used shall be such as is most feasible and suitable to the character of the commodity, or—if there is a trade custom as to the measure or the quantity of that particular commodity—the designation shall be in accordance with the custom.

This act does not apply (1) when the sale of a commodity is made from bulk, and the quantity is measured, weighed or counted for the immediate purpose of such sale; (2) to the sale of any container of an ornamental or symbolic character with which a quantity of some commodity is sold as merely incidental; (3) to the sale of a commodity which is sold for less than eleven cents at retail.

Noncupative Wills: See **Wills**.

Non-Suit: See **Actions**.

Note: See **Negotiable Instruments**, ¶3083, 3183, 3205, 3211, 3265, 3170.

Notice includes all papers and orders (except **Process**) required to be served in any proceeding before any court, board or officer, or when required by law to be served independently of such proceeding. See **Negotiable Instruments**, ¶3137, 3175 to 3198.

Nuisance is anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway. It is a public nuisance if it affects at the same time an entire community or neighborhood, or any considerable number of persons, although the

extent of the annoyance or damage inflicted upon individuals may be unequal. Every other nuisance is private.

Nothing which is done or maintained by or under the express authority of a statute can be deemed a nuisance.

Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable in the same manner as the one who first created it. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. A person injured by a private nuisance may abate it by removing (or if necessary), destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury. When a private nuisance results from the mere omission of the wrongdoer and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

Oil Claims: See Mining Law.

An Option is a contract, by which the owner of property agrees with another person that he shall have the right to purchase that property at a fixed price, within a certain time. Such a grant constitutes the grantee the equitable owner of an interest in the property. It vests in him the right or privilege of acquiring an interest in the land and, when accepted, entitles him to call for specific performance. When this right is exercised, it relates back to the time of giving the option, so as to cut off intervening rights acquired with knowledge of its existence—even to one who has filed a Homestead in the meantime.

Sometimes the owner of real property gives an agent some writing concerning the property—an option, an agency agreement, or an order. The agent causes this writing to be placed of record in the county where the property is located, thus creating a cloud upon the title. Title companies will not approve the title unless this cloud is removed. This will require a suit to quiet title unless the agent is paid some bonus for a quit claim deed. This is what he was looking for. In order to prevent just such practices upon the part of any person, I believe that the following clause inserted in any such writing would be sufficient: "It is particularly agreed that this instrument shall not be recorded, and that if it is recorded by any person, or for any reason, it shall at once become

null and void, and all of the parties hereto shall immediately be released from any obligation to carry out any of its terms."

Oral. By word of mouth; parol. See Contracts, Statute of Frauds; Statute of Limitations; Warranty.

Outlaw. See Limitations, Statute of.

Owner. See Real Estate; Warehouse Receipts.

Par Value means face value, not its intrinsic value. See Corporation.

Partnership: See Liens; Mining Partnership; Monopoly; Trusts; Ships; Real Estate Agents; Negotiable Instruments, §§158, 3159, 3180, 3181, 3209. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them. It can be formed only by the consent of all the parties to it, and therefore no new partner can be admitted into a partnership without the consent of every existing member of it. It may be determined either by some written agreement, or by acts of the persons. The following acts have been decided by our Supreme Court not to be partnerships; a lease of farmland with share of the crop; lease of a threshing machine, for portion of the net profits; John buys goods with money belonging to Jack and Harry, and the profits are divided equally; real estate agent agreement to sell subdivided land for a percentage of the profits; leasing the entire property of a corporation at a sum equal to 25 per cent. of the net profits of the business. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired by it. The interest of each member of a partnership extends to every portion of its property.

In the absence of any agreement on the subject the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution increased or diminished by his shares of profit or loss. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property. The relations of partners are confidential. They are trustees for each other within the meaning of trusts, and their obligations as such

trustees are defined there. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. Each member of a partnership must account to it for everything that he receives on account of it, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit of it, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf. Partners may (upon or in anticipation of a dissolution of the partnership), agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part of it. See Good Will.

Special partnerships may be formed, by which one party contributes nothing except money, and has nothing to say about how the business is to be carried on. He is liable only to the amount of his cash invested, provided he files a certificate stating his name, address, the name, kind and address of the business, and the amount of actual cash contributed by him.

A partner may embezzle partnership property or money.

Partition: When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only upon the share assigned to such party; but such share must first be charged with its just proportion of the partition, in preference to such lien.

Party Wall: See Real Estate, ¶18.

Pasturing Lien: See Liens.

Pasturing Stock, Lien for: See Liens.

Payment: See Check; Accord and Satisfaction; Sales; Title; Payment under Protest; Negotiable Instruments, ¶3169, 3264, 3153, 3154.

Payment of Honor: See Negotiable Instruments, ¶3252 and following.

Payment under Protest: The general rule is that if a person knowingly submits to an illegal demand and pays what is demanded, he will be considered to have paid the amount voluntarily, unless he invokes the remedy which the law affords against such demand. to be paid under compulsion, if the demand was unlawful. Such

money can be recovered back, if the delay required to secure the property by legal process would result in serious loss to its owner. This rule is subject to the qualification; that if a person obtains possession of the property of another without first beginning legal proceeding for that purpose, money paid to him will be considered paid under protest.

Payee: See Negotiable Instruments, ¶3143, 3149.

Perishable Property: See Actions,

Personal Property: See Bailments; Deposit of Personal Property; Sales; Storage; Warehousemen; Findings; Liens; Warranty; Hiring; Crops; Stoppage in Transit; Title; Exemption; Pledge; Chattel Mortgages; Transfers; Bulk Law; Statute of Frauds; Accession; Consignment. Includes money, chattels, goods, things in action and evidence of debt. It is in law designated by the word "chattels." There are "chattels real" and "chattels personal." Chattels real are estates in land, less than a title in fee, such as a lease, or an easement. Chattels personal include all other forms of personal property, and will be more particularly considered here. By law these are again divided into two classes: (1) Choses in possession and (2) choses in action. The former is one of which the owner has the present possession and control—such as merchandise which he has bought. The latter is when property belonging to an owner is being kept from him—such as a horse which is stolen, or money which is unpaid upon a debt, or damages to which he is entitled for injury to his person or possessions.

Titles to personal property may be acquired in one of four ways: (A) By legal process, or (B) by the parties themselves, or (C) by operation of law, or (D) by original acquisition. (A) Title to personal property when acquired by legal process, is by execution or by judicial decree. See titles to real property, where these means have been considered. (B) Title may be passed by the parties themselves, by (1) gift, (2) by contractual relations, or by (3) devise. (1) Gifts are of two kinds; *intervivos* and *causa mortis*. A gift is a free transfer of personal property, but it must be accompanied by delivery—otherwise it may be considered to be in fraud of creditors, or relations. See Delivery, under Real Estate; Statute of Frauds. *Inter vivos* means "during life," and the death of the giver makes no difference. "*Causa mortis*," in the other hand, means "in view of death," and refers to a gift when the giver expects to die,

and wishes to see that his wishes regarding certain of his property are carried out before he dies, to his satisfaction; but it is revoked by operation of law if the giver does not die. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given also; nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the person to whom it is given. Otherwise it must be in writing. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift. It must be treated as a legacy only so far as relates to the creditors of the giver. That is, upon deficiency of assets to pay lawful claims of creditors, any gift in view of death must give way, so far as it may be needed to discharge such lawful claims. (2) Title by contract is such as one gets by an agreement of the parties—as a purchase and sale. (C) Title by operation of law is (1) marriage, such as is acquired by reason of the community interest of either spouse (see Community Property; Husband and Wife); (2) by Succession and (3) by forfeiture, as where a purchaser loses his interest in an article purchased when he fails to comply with some of the terms on which he bought it. See Installment Sales; Conditional Sales. (D) When one acquires title in its original inception, he does so in one of three ways: (1) By creation—as where he makes the thing itself, as an inventor, or products of the mind (which see); (2) by Accession (which see) and (3) by occupancy, such as one might gain when there was no owner of the property before—as in wild animals or sea drift—or from findings (which see). When is the precise moment when the title passes to personal property is often a most serious question. It passes the instant a suit is filed for the purchase price of goods sold on installments, or the balance of the purchase price of any chattel. See Stoppage in Transit—Vendors' Lien; Actions; Title; Consignment; Negotiable Instruments, ¶3136.

Personal Relations: See Citizens; Arrest; Husband and Wife.

Persons: The persons to whom property is transferred must be either natural, or artificial (such as a corporation), capable of taking and holding the property. The Supreme Court has held that the following names were not persons: "Hibernia Company," "The Community styling itself Roman Catholic St. Bonifacius Church Community;" and that property conveyed "to W. W. Phelps & Co." conveyed title only to Phelps, though he had other

partners. An heir apparent who gives a deed to property which he expects to inherit cannot pass a title either past or future before the death of the person who then owns the property.

Petroleum: See Mining Law.

Physician: A physician is supposed to have that reasonable degree of skill and learning possessed by others of his profession, and to agree with the patient that he will use reasonable and ordinary care and skill in the application of such knowledge to accomplish the purpose for which he was employed; if he does this, he is not liable for the results which follow.

No presumption arises from the fact that the patient did not recover, that the physician did not exercise the proper skill and attention; he is not a warrantor of cures.

To constitute negligence on his part, it must be shown that he did something which he should not have done, or that he did not do something which he should have done. (See Privilege.)

Pipe Line: See Real Estate; Oil; Mines.

Pledge: See Personal Property; Mortgage; Chattel Mortgage; Trust Deed; Trustee; Warehouse Receipts; Deposits; Loans. A pledge is a deposit of personal property by way of security for the performance of another act. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge-holder as hereafter prescribed. The increase of property pledged is pledged with the property. One who has a lien upon property may pledge it to the extent of his lien. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business and for value. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledger for himself, except as hereinafter stated.

A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge-holder. One who pledges property as security for the obligation of another, cannot withdraw the property pledged

otherwise than as a pledgeor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent. A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgeor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of it. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them. A pledgee, or a pledge-holder for reward, assumes the duties and liabilities of a depositary for reward. A gratuitous pledge-holder assumes the duties and liabilities of a gratuitous depositary.

Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him—the creditor may demand a further pledge to correspond with the value represented; and in default of it may recover his debt immediately, though it be not actually due. When performance of the act for which a pledge is given is due (in whole or in part), the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed. Before property pledged can be sold (and after performance of the act for which it is security is due), the pledgee must demand performance from the debtor, if the debtor can be found. A pledgee must give actual notices to the pledgeor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend, if he wishes. Notice of sale may be waived by a pledgeor at any time, but is not waived by a mere waiver of demand of performance. A debtor or pledgeor waives a demand of performance as a condition precedent to a sale of the property pledged by a positive refusal to perform after performance is due; but cannot waive it in any other manner except by contract.

The sale by pledgee, of property pledged, must be made by public auction in the manner and upon the notice of sale of personal property under execution. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of government, states, or corporations; but he may collect the same when due. Whenever property pledged can be sold for a price sufficient to satisfy the

claim of the pledgee, the pledgeor may require it to be sold, and its proceeds to be applied to such satisfaction, when due. After a pledgee has lawfully sold property pledged (or otherwise collected its proceeds), he may deduct from it the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgeor, on demand. When property pledged is sold by order of the pledgeor before the claim of the pledgee is due, the latter may retain out of the proceeds what can possibly become due under his claim until it becomes due. Whenever property pledged is sold at public auction, in the manner provided, the pledgee or pledge-holder may purchase said property at such sale. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

Plumbers: Every master or journeyman plumber must register his name at the health office in the city or county where he carries on his business; and no person shall carry on the business of a plumber unless so registered, and unless he shall first have obtained a license from the Board of Health.

Policy: See Insurance.

Poll Tax: There is no poll tax levied in this state, but the 1919 legislature passed an act assessing a poll tax of \$4 against each adult, which act is to be voted upon by the people at the next general election (1920).

Possession: See Real Estate.

Power of Attorney: A power of attorney is an authority given by one person to another to transact business for him and in his name. The extent of the authority is limited, of course, by the language of the instrument. It may be general to transact all business, or special, to do a certain thing. The person to whom such an authority is given is called an "attorney in fact."

The owner of real property may authorize another person to find a purchaser for it, and execute a contract of sale thereof, by any form of simple writing, but he can confer authority to make the actual conveyance for and in his name only by means of a written power of attorney. The person named in the instrument then has power to do any lawful act which his principal could do, and it will be binding upon the principal with as full force and effect as

if done by the principal himself. When an attorney in fact executes an instrument conveying any estate in real property he must, however, first subscribe the name of his principal to the instrument, followed by his own name as attorney in fact.

Every power of attorney must be in writing. It cannot be given verbally under any circumstances.

A married woman may make, execute and revoke powers of attorney for the sale, conveyance or incumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.

A power of attorney to transfer real property must be executed, acknowledged and recorded, before the grant is, in order to make the conveyance valid, and also to keep the chain of title perfect and in proper sequence. Otherwise there would be no public evidence of the right of the attorney in fact to make the transfer.

Whenever, by reason of the sale of the property by the owner himself, or for any other valid reason, it is desired to revoke a power of attorney, the only manner in which it can be done is by another instrument formally withdrawing or revoking such power, which must also be acknowledged and recorded in the same county recorder's office in which the instrument containing the power of attorney was recorded. This is a very important matter, which should always be attended to promptly when the occasion for it arises; for until it is done the authority of the attorney in fact remains in full force and effect, which might lead to serious complications if the property had been otherwise disposed of without his knowledge.

Prima Facie: On its face; apparently. See Negotiable Instruments, ¶8092, 3095, 3105, 3123, 3140.

Presentment: See Negotiable Instruments, ¶3151, 3152, 3192, 3202, 3214, 3217, 3224, 3225, 3226, 3229, 3234, 3237, 3249, 3250, 3265b.

Principal and Agent: See Negotiable Instruments, ¶3100, 3101, 3102, 3103; Master and Servant; Employer and Employee; Agent; Factor; Real Estate.

Privileged Communication: See Slander.

PRIVILEGED COMMUNICATION: A privileged communication is one which cannot be made a basis either for slander or libel, and

includes statements made (1) in the proper discharge of an official duty; (2) in any legislative or judicial proceeding, or in any proceeding authorized by law; (3) in a communication without malice, to a person interested therein, (a) by one who is also interested, (b) or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or (c) who is requested by the person interested to give the information, (d) by a fair and true report, without malice, in a public journal, or a judicial, legislative, or other public official proceeding, or of anything said in the course of it, or of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued, (e) by a fair and true report, without malice, of the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or the publication of the matter complained of was for the public benefit. In the cases described in c, d and e, malice is not presumed.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceedings for a crime committed by one against the other; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife or in an action for damages against another person for adultery committed by either husband or wife.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given on it in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity.

3. A clergyman or priest cannot, without the consent of the

person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; provided, however, that after the death of the patient, the executor of his will, or the administrator of his estate, or the surviving spouse of the deceased, or, if there be no surviving spouse, the children of the deceased personally, or, if minors, by their guardians, may give such consent, in any action or proceeding brought to recover damages on account of the death of the patient, caused by the negligent or wrongful act of another.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Process includes all writs, warrants, summons and orders of court or judicial officers. See Notice.

Promissory Note: See Negotiable Instruments, ¶3083, 3265, 3205, 3211, 3170.

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. It may be issued by any court except police or justices' courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested. The writ must be either alternative or peremptory. The alternative writ must command the party to whom it is directed to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause

why he should not be absolutely restrained, etc., must be omitted, and a return day inserted.

Procuration: See Negotiable Instruments, ¶3102.

Property: See Personal Property; Real Estate.

Prescription: See Real Estate, ¶33.

Protest: See Negotiable Instruments, 3192, 3199, 3233 and following, 3148, 3251.

Proxy: See Corporations.

Public Weighmaster: See Weights and Measures; Warehouseman; Hay Baler.

Section 1. All persons, firms, corporations, copartners or individuals engaged in the business of public weighing for hire, or any person, firm or corporation, who shall weigh or measure any commodity, produce, or article, and issue for it a weight certificate which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article, is based, shall be known as a public weighmaster, and shall file a bond with the state superintendent of weights and measures in the sum of one thousand dollars for the faithful performance of his duties, and shall obtain from the state superintendent of weights and measures a seal for the stamping of weight certificates hereinafter provided for, which shall only be in such form as such superintendent may prescribe; provided, that nothing in this act shall apply to any scales, or to the owner or lessee of them, which are situated wholly outside of any incorporated city or town, except where said scales are being used in the weighing of any commodity which has been or is being purchased by the owner or lessee of it, which are being used in the weighing of any commodity intended for storage for which a storage charge is made.

(a) The said seals shall be the property of the state and shall be forfeited and returned to the state superintendent of weights and measures upon termination of the performance of the duties herein prescribed as being the duties of a public weighmaster. Such seal shall be of a form and design prescribed by the state superintendent and furnished by him at the expense of the weighmaster. Said seal shall be a recognized authority of accuracy when applied to weight certificates.

Section 2. The state superintendent shall prescribe a form of weight certificate, and none other than that shall be used by public weighmasters.

Section 3. They must keep records of all public weighings,

which records must be at all times open to the inspection of the superintendent.

Section 4. If a public weighmaster shall issue a false certificate of weights and measures, he shall be guilty of a misdemeanor and may lose his certificate, his seal, and also be liable to arrest and punishment.

Section 5. Any person, firm or corporation, who shall request the public weighmaster, or any person employed by him, to weigh any product, commodity, or article falsely or incorrectly, or who shall request a false or incorrect state certificate of weight and measure, or any person issuing a state certificate of weights and measures who is not a public weighmaster as provided for in this act, shall be guilty of a misdemeanor.

Section 6. When doubt or differences arise as to the correctness of the net or gross weight of any amount or part of any commodity, produce, or article for which a state certificate of weights and measures has been issued by a public weighmaster, the owner, agent, or consignee may, upon complaint to the state superintendent of weights and measures, or his deputy, have said amount or part of the amount of any commodity, produce, or article, reweighed by the state superintendent of weights and measures, or a public weighmaster designated by him, upon depositing a sufficient sum of money to defray the actual cost of reweigh with the state superintendent of weights and measures. If, on reweighing, a difference in the original weight is discovered as the result of fraud, carelessness or faulty apparatus, the cost of reweighing shall be borne by the public weighmaster responsible for the issuance of such faulty state certificate of weights and measures. All public weighmasters employing or designating any person to act for them as deputy public weighmaster, shall be responsible for all acts performed by such person, and the public weighmaster shall forward to the state superintendent of weights and measures the name and address of persons so appointed.

Section 7. All amounts, lots, shipments, or consignments of products, after having been weighed, shall be piled or stored separately, as near as can be, or in some manner marked in order that said amounts, lots, shipments, or consignments may be distinguished from each of a like kind. When any product is sold subject to public weighmaster weights, such weight shall be the true net weight of the product. Net weight within the meaning of this act shall be the

correct or actual weight of the commodity excluding the weight of the container.

Section 7 (a)). Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

Quit Claim: See Real Estate, ¶40.

Ranch Name: See Trade Name.

Ratification: See Contracts; Agency; Waiver.

Real Estate Agents: See Real Estate; Statute of Frauds; Agency; Factor.

All persons acting as real estate agents must secure a license to do so—according to a law passed in 1919. This was similar to a law passed in 1917, which was afterward declared to be unconstitutional. The present law was declared constitutional by our Supreme Court in December, 1919.

Real estate brokers are those who negotiate between the buyer and seller of real property, either finding a purchaser for one desirous of selling, or vice versa; they also manage estates, collect rents, lease or let property and negotiate loans on bonds and mortgages.

An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or for a commission must be in writing signed by the parties to be charged or his agents duly authorized.

If there is no agreement in writing, a broker cannot collect for the reasonable value of his services, even though it is through his efforts that the sale is made.

The following agreements need not be in writing: A broker who loans the money to another, and takes land as security; the promise of one broker to divide commissions with another; a partnership for the purpose of buying and selling land; an oral contract between brokers whereby one employs another to secure the co-operation of another to sell real estate. (Such contracts fall into one of three classes—partnership, division of commission, or promise to pay a definite sum for securing a purchaser.)

But a real estate broker's agreement to sell subdivided land for a portion of the profits is not a partnership, nor is a lease of farm lands with a share of the crop.

The owner of a tract of land agreed in writing with a firm of real estate agents that they should have the exclusive sale of this

tract and that they must make certain improvements; after the proceeds of the sales and of any crops he should first receive a certain sum pro rata and the balance was to be divided equally between him and them. This was not a partnership.

A broker who is an agent in making a loan upon real property may also be a partner in the firm who borrowed the money.

The broker undertakes, as a condition of his right to demand a commission, to bring the buyer and seller to an agreement.

It is his duty to negotiate a sale; that is, to procure a valid contract to purchase, which could be enforced by the seller, if his title is perfect; or if the broker does not procure such a contract, to bring the seller and the proposed purchaser together, that the seller may procure such a contract—unless he is willing to trust to an oral agreement.

To “consummate a deal” means to bring it to completion.

Each case must be decided on its own facts.

Examples: An agreement with an agent read “he now has a prospective purchaser from whom he expects to secure the sum of \$1500 for a lease—and should he succeed in consummating a deal with this purchaser” a commission was to be paid. If the \$1500 was paid by this purchaser the agent was entitled to his commission, even though nothing further was done.

“These gentlemen seem to be very much pleased and will talk to you on commission, so arrange with them. I simply told them they could adjust the matter with you, as I would surely allow you a commission if I did sell to them.” Such a letter written by the owner to the agent is NOT an agreement to pay commission.

Two persons agreed in writing to exchange properties, but did not, because the title to one parcel was defective. In the same instrument they also wrote “The parties hereto further mutually covenant and agree that they will pay to (broker) a commission of \$1850;” but they did not have to, because this clause was dependent upon the exchange being made.

“The undersigned agrees that if the Western Barrel Co. or any concern represented by B. F. M., leases a certain building to be erected by the undersigned, he will pay to the agent fifteen hundred dollars for services rendered in making such lease.” The signer formed a corporation who erected such a building, as he could not finance it. The Barrel Co. and a partnership with B.

F. M. as one of his members, together with the Earl Fruit Co. (whom the agent did not represent) leased the building. The agent could recover his commission.

"I reserve the right to sell said property myself, or to sell said property through the agency of any one else, but I hereby agree that in such case should sale be made by myself or through any other agency, in consideration of their services, to pay a commission." The broker who held this agreement was entitled to his commission when the sale was made, even though it was made by other brokers to parties whom he had never seen.

"If you can purchase the N. W. corner of First and B streets for \$50,000 I think we would be ready to purchase next week." This was not a sufficient offer of employment.

Where the owner agreed that if before the expiration of the contract he should withdraw the sale of the property the broker should be entitled to his commission—he did so and had to pay the broker.

In another case the owner agreed that "a commission is to be paid in the event of a sale of said property by them or any one else, including myself."

EXCLUSIVE AGENCY: An exclusive agency is one given by the owner to only one broker, for a definite period. If during this period another broker should sell the land and be paid a commission by the owner, the first agent could also recover a commission.

There is a distinction, however, between an exclusive AGENCY (in which the owner has the right to sell the property himself without being liable to the agent for commission) and the exclusive RIGHT to sell the property—where the owner would be compelled to pay a commission, no matter who sold the property.

"I hereby authorize you solely to sell my property" is an exclusive agency.

Brokers were authorized to sell the property at any time within one year and that the commission should be paid if the owners withdrew the property from sale or effected a sale in any way during the year. The owners did make a sale during the year, and, therefore, were liable for the commission.

Frequently the owner is willing that the agent should also make a contract for the direct sale of the property, and under such cir-

cumstances that agreement must not only be written, but must be definite in form and explicit with proper descriptions.

"Negotiate" means the conversation in arranging the terms of a contract; and one given a writing with the words "make and negotiate a sale" of real property may neither give a valid deed, nor make a contract for the sale; nor is such authority given by the words "for sale," or "to sell."

The following have been decided to give the agent sufficient power to make an agreement to sell which would bind the owner, but not sufficient to make an absolute deed, which would be binding upon the owner:

"I hereby authorize John Richards and grant to him the exclusive right to sell for me in my name and to receipt for deposit thereon—I hereby agree to sell and convey by good and sufficient grant deed said property to any purchaser obtained by him."

"I wish you to manage my property as you would your own, and if a good opportunity offers to sell everything I have; I will be glad to sell."

An agent accepted a deposit of \$50 on a lot, though he was not authorized by the owner to make any agreements of any kind regarding it. The owner did tell another person that this agent was authorized by him to sell the lot and directed that person to see the agent "in the matter."

The following is an unqualified power of attorney to sell the land mentioned: "You are hereby authorized and empowered as agents for me to sell my property."

The following have been held as NOT sufficient authority for an agent to convey the property of his principal:

"Sell the property."

"You are hereby authorized to sell my property and receive deposit on same, for the sum of \$200 per acre cash. I hereby agree to pay you the sum of 5% for your services in case you effect a sale."

"If you can purchase N. W. corner of 18th and Franklin, 75x100, for \$42,000, I think we would be ready to purchase same by Monday next."

A receipt signed by an attorney for the estate to which the real property belonged, a report of the sale of such property in the

matter of such estate and a check drawn by the purchaser of such sale are not sufficient to satisfy the statute of frauds.

The owner wrote: "Try and find a purchaser for my property."
The agent wired him: "Have sold house 6150; wire confirmation."
The owner wired answer: "Terms satisfactory."

"—— is hereby authorized to sell my property."

An agent with authority to sell land in twenty-acre tracts upon certain definite terms has no authority to bind the owner in the sale of ten-acre tracts upon different terms, when the owner does not sanction the agreement nor receive any of the money.

COMMISSIONS FROM BOTH SIDES: A broker may collect a commission from both sides provided he acts only as a mere middleman, and does not act as an adviser for one side or the other; and provided also that both sides understand he is receiving this double commission, but not otherwise.

HOW COMMISSION IS EARNED: The broker's commission is earned in one of three ways: (a) effecting a binding contract of sale under authority given the agent; (b) producing a purchaser to whom the sale is actually made; (c) producing before the seller a purchaser (I) Ready (II) Willing and (III) Able to buy (IV) On the terms proposed (V) Or others agreed upon (VI) Within the time limit of the agreement.

(a) The agent is entitled to his commission when he has produced a contract signed by a solvent purchaser, even though his agency is revoked, or the title is bad, or though not upon the precise terms nor at the date agreed upon, nor even if sold to another purchaser after the broker has submitted one who would buy or if the sale fails because of a defective title or if the owner casts suspicion on it or defers meeting the intended purchaser until after the term of the agent's employment has expired.

The agent cannot recover if the property is sold by the owner before the broker has found a buyer unless the option is **EXCLUSIVE**.

(b) If the agent introduces the purchaser or discloses his name to the seller and through such introduction or disclosure negotiations are begun which lead to the sale, the broker can recover; also if he first calls the attention of the purchaser to the land and advises him to buy it, even though the deal is finally negotiated with the owner through the agent of the purchaser.

The broker need not have personally conducted the negotiations nor be present when the bargain was completed, nor need the owner at the time have known that the purchaser was one found by the broker. If the efforts of the broker were the procuring cause of the sale, though the parties themselves did the negotiating, this will be sufficient.

(c) The payment of commission is not contingent upon the consummation of the sale. The buyer must be produced before the seller, or his name given. It is not sufficient for the agent to say when asked if he told the owner to whom he could sell the place, "I told him a man in Oakland—I don't remember if I used the name," nor can the broker or the purchaser compel him to go to the place of business of the seller, either to make the contract of sale or to negotiate for its terms.

(c-i) Before a broker has earned his commission it must also be shown that he produced a purchaser who was ready and willing to make the purchase; such readiness and willingness can be shown only by an offer on the buyer's part to purchase. Such an offer must either be to the seller (not to the broker) or a contract must actually be entered into.

It is not sufficient to find a purchaser who is financially able, but who only expresses his willingness and readiness to the broker and who makes a deposit with the broker, but who is never introduced to the seller.

"I further agree that when the brokers have secured an acceptance of this proposition to exchange the said property on said terms I will then pay them the regular commission." As soon as this offer is accepted in writing, by a person who is ABLE to make the exchange, the broker need do nothing further, and has no other responsibilities. His commission is due, even though the parties do not carry out their agreements.

A broker secured a buyer who signed the following agreement: "It is hereby agreed that the above property is this day sold to the undersigned for the sum of \$4500.00." This was held to be merely an OPTION and not a showing that the signers were financially responsible.

Where a person submitted by a broker as a prospective buyer did not give satisfactory assurance that he would be able to fulfill

all of the obligations, saying that "he was much inclined to over-reach himself," he was not considered **ABLE** to buy.

The buyer was to comply with escrow instructions by placing the purchase price within fifteen days. He did not do so and the broker could not recover his commission.

(c-iv) A broker is held strictly to the terms of his agency. He cannot recover where he submits a buyer upon terms differing in any manner from those imposed by the seller, unless such terms are afterwards accepted or ratified by the seller.

If no **TERM** is expressed in the broker's contract it may be terminated at will by either party. The price must be named. If there is none, the owner may refuse every offer made.

(c-v) A written authority cannot be changed by a verbal agreement. If the agent should obtain a written offer upon definite terms and the owner afterwards gives him a verbal modification of these terms and he secures a customer upon these changed terms he cannot recover.

(c-vi) When an agent procures an agreement in which time is of the essence, he is bound by its terms. There is no implied promise arising of necessity from the relation existing between a prospective seller and his agent that the former will pay a commission if, at a time subsequent to the life of the written contract, the property is sold to the person introduced to the owner.

If the purchaser is willing to take the property on different terms and the variance is waived by the seller, the broker may obtain his commission. Or, if after having produced a suitable purchaser but not within the time limit, owing to delay caused by his principal, the broker is still entitled to his commission.

(c-vii) A written agreement limiting the agent's time cannot be extended by a verbal agreement.

A prospective purchaser introduced by the agent to the owner within the two months mentioned in their agreement of agency, promised to take the property on the terms offered, but did not do so. After the time expired other negotiations were opened and he finally bought it, but the agent could not obtain a commission.

On May 22nd the owner gave an agent a verbal offer to sell property for a certain amount, less 5%, "subject to prompt reply." (This meant that the offer would expire and cease to be binding unless this property was sold and the owner notified on the follow-

ing day.) On May 28rd the owner withdrew the offer, and began negotiations with a person whom the agent had interested in the property but whom he had not introduced to the owner. The owner made the sale and the broker got no commission.

LEASES: The requirements as to the agent's obligation in the matter of a lease is the same as if he were to procure a purchaser, except that, a lease being personal property, the authority to the agent need not be in writing.

He is entitled to the reasonable value for such services, which may be proved by the resolution of a board of directors of the real estate exchange, with the evidence of other real estate brokers that this was the customary and reasonable charge. He is not entitled to a continuing commission when the same premises are leased to another corporation at the expiration of the first term, although the stockholders are the same as in the corporation to which the premises were first leased.

"We will pay you a commission upon the signing of the lease." No actual lease was ever signed, but the broker procured an agreement by responsible parties to lease a building to be erected for their special business and to sign a lease upon its completion. The construction of that building was commenced, but it was destroyed by the San Francisco fire before completion. The broker could not recover.

RATIFICATION: The agreement for commission must be ratified in writing—if not in writing originally.

It is not sufficient ratification for the owner to sell the property himself, nor is the following enough: A broker went to the owner and told him he had made the deal; the owner said "All right." And the broker tells the story thus: "I had a contract of sale with me to sign showing that the sale had been made and I spoke to him about it. He said his mother would have to sign it, and he would rather wait until morning. I said: 'If you cannot sign this up to-night would it be all right for me to take the money and receipt for it?' He said: 'It will be all right; we will sign the contract tomorrow.'" He never did sign the contract, and the broker could not recover.

An owner gave an agent in writing the exclusive privilege to sell a piece of real estate for \$36,000 cash; five days being allowed "to find a purchaser." On the last day the agent received a verbal

offer for the property at \$35,000 without the house. He communicated this offer to the owner, on the same day, giving the name of the proposed buyer and the owner said, "That is all right." Two days afterward the owner gave written authority to another broker who the next day sold the house to the same buyer at the same price which he had offered before. The first agent could also recover a commission, because the owner had ratified the change of terms by accepting them.

The owner signed an agreement "for ten days and thereafter until withdrawn by me in writing." After this ten days the owner wrote at the bottom of this agreement, "The above contract is hereby extended to November 15th. I accept the above." The agent produced the buyer December 15th. He could recover his commission.

REVOCATION: Is by mutual consent, performance, the pleasure of either party in good faith, lapse of time, sale by another, destruction of the property, bankruptcy, insanity or death of either party, fraud of the agent.

If the agent has expended time and effort in seeking to find a purchaser, his agreement cannot be revoked before the expiration of its term, but if his contract is cancelled he cannot make future contracts for the sale of land.

If the agent submits several buyers or tenants, all of whom are rejected by the owner, and negotiations are broken off, and the agent's term expires, the agent cannot recover a commission provided the owner afterwards sells to some of these buyers submitted by the agent; unless, perhaps, if the agreement of agency was irrevocable.

OPINIONS: There is a very fine border line between MISREPRESENTATIONS made by an agent in his endeavor to sell property, and his mere opinion, or exaggerated statement of his belief (See Warranty). Our Supreme Court has decided that the following statements are only OPINIONS, and do not constitute misrepresentations: "It is good orange land. Would raise oranges; would make you a fine living; first class decomposed granite, or gravel; free from frost; you can put out oranges in the summer, and go east, and come back, and you will get oranges;" the value of book accounts; the amount of horsepower which could be de-

veloped with certain water; the amount of earth necessary in an excavation; character of earth along the line of a levee.

The following have been decided to be statements of facts, and, if untrue, were then misrepresentations (See Fraud; Rescission): As to the character of land, and its suitability for fruit ranch; the value and richness of a mine and its convenience to water; that certain land was abundantly watered by means of having 44 shares in a certain water company, and that there would be flowing a specified amount of water, which would be ample to irrigate the entire land and produce crops of alfalfa; value of ore in an ore dump; value of mining property in Mexico; value of goodwill and business; representation as to the cost of a building; as to the ownership of land; "containing 40 acres, more or less," when there were only 23 acres."

FRAUD OF THE AGENT: (a) To the owner; (b) To the buyer.

(a) In the employment of an agent the principal bargains for his disinterested skill and diligence, and whenever the interests of the agent become antagonistic to those of his employer, he violates his obligation by continuing to act in his behalf without disclosing that fact.

A broker who is employed by the owner to sell his property is, by the mere fact of accepting such employment, precluded from acquiring an interest in the property he is employed to sell. He cannot act as such agent in making a sale, either to himself or where he is interested in the purchase, and he is equally precluded from having a personal interest in the result of the sale of which the principal is ignorant.

Whenever he has an interest in making the sale which is antagonistic to that of his principal, he is unable to discharge his full duty to the latter, and by continuing to act as his agent, without disclosing to him the fact of such interest, he commits a fraud upon him which will deprive him of all right to compensation for his services.

Examples: If an agent without authority purchases land for his principal, claiming that he paid a certain price, when, in reality, he paid less, and if the principal pays the higher sum, he may recover the difference back from the agent, and need not reconvey the land.

An agent who took an option on a piece of land for the sum of

\$1850, but who told his principal that the option price was \$2850, and who sold the land to the principal for the latter sum, and put the difference in his pocket, could be compelled by the buyer to refund the profit thus wrongfully obtained.

(b) One who deals with another upon his mere statement that he is the agent of some third party takes upon himself the risk of being able to show that such agency existed. If, instead of satisfying himself upon the subject by independent investigation, he accepts such statements and is deceived, he is the victim of his own credulity.

An agent may buy of his principal or have an interest in the sale of property belonging to the principal and within the scope of his authority, provided that the principal had knowledge of all these facts, and after the agent has made a full disclosure of all he knows with regard to the property.

If a prospective buyer pays a portion of the purchase price of land to the agent of the owner he cannot compel the owner to deliver title upon tender or payment of the balance of the purchase price, where there was no written agreement from the owner directly.

A breach of the contract of agency on the part of the owner of property or the borrower of money would consist in: (1) Either accepting and receiving the loan and then refusing to pay the commission; or, (2) In refusing to accept and receive the loan when the broker had procured it according to the terms of their agency; in either of these cases the brokers would be entitled to their commission.

Where the contract fixes the broker's right to remuneration upon his sale, if he shall produce a purchaser ready and willing to buy, he has performed his part of the contract, the owner's liability for his commission is complete, and cannot be avoided by any arbitrary or wanton refusal to consummate the sale.

"The owner cannot avail himself of the services, and, by making a sale through information derived from his agent, deprive the latter of his commission."

"A broker may by special agreement with his principal so contract as to make his compensation depend upon a contingency which his own efforts cannot control, even though such contingency relate to acts of his principal."

An agreement to sell real property binds the seller to execute a conveyance to pass the title to the property.

An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of "seizin," quiet enjoyment," "further assurance," "general warranty," and "against encumbrances."

These covenants must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

Damage caused by the breach of a covenant of "seizin," of "right to convey" or "warranty," of "quiet enjoyment," in a grant of an estate in real property, is deemed to be: (1) The price paid to the grantor; or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property; (2) Interest on it for the time during which the grantee derived no benefit from the property, not exceeding five years; (3) Any expenses incurred by the covenantee in defending his possession.

Real Property: All property is divided into two classes: REAL, or immovable; PERSONAL, or movable. REAL PROPERTY consists of LAND; that which is affixed to land; that which is incidental to land, or appurtenant to it; that which is immovable by law. LAND is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance. The owner of land in fee, has the right to the surface, and to everything permanently situated above it or below it.

Property is acquired by (a) occupancy; (b) Accession; (c) transfer; (d) Will or Succession.

OCCUPANCY for any period confers a title sufficient against all except the State and those who have a title by prescription, ac-

cession, transfer, will or succession; provided, however, that the title conferred by such occupancy shall not be a sufficient interest in real property to enable the occupant or his privies to commence or to maintain an action to quiet title, unless such occupancy shall have ripened into a title by prescription.

REAL ESTATE includes (1) the possession of, claim to, ownership of, or right to, the possession of land; (2) All mines, minerals, and quarries in, and under the land, all timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges pertaining to them. Thus, oil is a mineral, and land upon which is growing timber may be conveyed to one person, and the timber to another—or, the title to timber can be held and transferred to one who is not the owner of the land (See Trees); (3) A mortgage, deed of trust, contract or other obligations by which a debt is secured (when land is pledged for the payment and discharge of it) shall be deemed and treated as an interest in the land pledged—for the purpose of taxation; (4) Improvements; a thing is deemed to be affixed to land when it is attached to it by roots (as in the case of trees, vines or shrubs) or imbedded in it, as in the case of walls; permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws. If growing crops are not cut, they are a part of the land, and title to them passes by sale of the land—unless specially reserved. Improvements include (1) All buildings, structures, fixtures, fences and improvements, erected upon, or affixed to the land, except telephone or telegraph lines; (2) All fruit, nut bearing or ornamental trees and vines, not of natural growth, except fruit and nut bearing trees under four years of age, and vines under three years of age; (3) Alfalfa after the first year's planting.

When the following burdens are attached to land, they are called **EASEMENTS**: (1) The right of pasture, (2) fishing, (3) taking game, (4) of way; (5) Taking wood, water, minerals and other things; (6) Transacting business, or conducting lawful sports upon land; (7) Receiving water, light, air or heat from, or over, or discharging the same upon land; (8) Flooding land, of having water flow without diminution or disturbance of any kind; (9) Using a party wall (See Fences); (10) Receiving more than natural sup-

port from adjacent land; (11) Having the whole of the division fence, maintained by a coterminous owner (See Fences); (12) Having public conveyances stopped, or of stopping the same upon land; (13) The right of burial, and the right of a seat in church.

RIGHT TO FISH: The people shall have the right to fish upon and from public lands of the State and in the waters of it, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish upon them; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted in it by the State.

A RIGHT-OF-WAY "is the privilege which one person, or particular descriptions of persons may have, of passing over the land of another in some particular line." The entire width may be used, even though wider than need be for the purposes intended, but land lying beyond cannot be appropriated; if the way is unlocated, and the owner of the easement fails to designate it, the owner of the land may do so, and if they cannot agree, the route may be determined by the Court.

A gave B a "RIGHT-OF-WAY" across his land, for purpose of a driveway having gates at both ends, which B should close as he passed; he refused to do so, but the court held that he could not use the driveway unless he did.

RIGHT-OF-WAY BY USAGE: When the public, or such portion as has occasion to use a road, travels over it, with full knowledge of the landowners interested, without asking or receiving any permission, and without objection from anyone, and for a period of time beyond that required by law to bar a right of action, a right to the public to the use of the road arises by prescription, or implied dedication. A dedication is presumed from long and continued adverse use, as a highway.

A WAY OF NECESSITY: This cannot exist, except in cases of strict necessity, nor when a man can get to his property over his own land. That the way over his own land is too steep, or too narrow, or that other and like difficulties exist, does not alter the case—and it is only when there is no other way through his own land that a grantee can claim a right over that of his grantor.

ANCIENT LIGHTS:

Under the old common law rule in England, a landowner had an absolute right to receive light and air from the adjoining land, and his windows could not be closed up by a building erected upon his line; but, no such easement was created under our law, and no right of this character can be acquired (in California) without express grant, or an interest in, or covenant relating to, the lands over which the right is claimed; an injunction will not be issued to prevent a buyer from erecting a building on his lot, so as to close up and darken the windows in a house of the grantor, and to shut off the light and air to it. (See Fence.)

(10) LATERAL SUPPORT:

A land owner has an interest in the adjoining land for the lateral support of the soil, subject to the right of the owner of this adjoining land to make proper and usual excavations on the same, for the purposes of construction. When so doing, he must use reasonable care and skill, must take reasonable precautions to sustain the land of the other, and give reasonable notice to the other of his intention to make such excavations. This right is only to the land in its natural state, and not to added weight placed upon it by buildings or structures. Whoever deprives a landowner of such support, does an unlawful act. All who unite in it are wrongdoers and are responsible in damages, even to the contractor who performs the work. But if a building collapses—by reason of adjoining excavations—a tenant cannot recover damages from his landlord.

Appurtenances: A thing is deemed to be appurtenant to (belonging to) land when it is used by right with the land for its benefit—as a right of way, a watercourse, a passage for light, or air or heat from or across the land of another. While shares of stock (in a water company) are not appurtenant necessarily, yet they may be shown to be, or may be made so.

Certain covenants (agreements) contained in grants of real property are appurtenant to such estates, and pass with them so as to bind the assigns of the one who made the covenant, and they vest in the assigns of the receiver of the covenant, just as if these assigns had personally entered into them. Such covenants are said to “run with the land,” if contained in a grant of or an estate in real property, including WARRANTY, QUIET ENJOYMENT, “for

further assurance on the part of the grantor," or for payment of rent, taxes, or assessments.

Alluvion: Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material, or by the recession of the stream, it is termed alluvion, and such land belongs to the owner of the bank, subject to any existing right of way over the bank. This rule also includes the sea shore. The owner is entitled to the land formed by gradual and imperceptible accretions from the water, regardless of the cause which produced it, or whether the flow was natural or affected by artificial means.

Avulsion: If a river or stream, navigable or not navigable, carries away, by reason of sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, it is termed AVULSION, and the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession of it.

Adverse Possession differs from PRESCRIPTION, because title to land is acquired, while in prescription one acquires title only to an easement, and not to the actual land itself, and also—no grant is presumed.

It must be exclusive, open and notorious, and not secret or clandestine; it must be hostile to the claimant's title and claim to be one's own exclusively. It must be continuous and uninterrupted for a period of five years, and the occupant must have paid all the taxes during that time.

A land buyer's possession is adverse to that of the seller, as soon as he has paid the purchase price. One cannot claim adverse possession against his landlord, nor the United States, nor the State; nor if a person is permitted to enter lands as a favor.

It is acquired by occupancy of the land for a period of five years and under one of the four following circumstances:

- (1) When the occupant (or those under whom he claims) entered into the possession of the property under claim of title (exclusive of other right), founding such claim upon a written instrument—such as a deed to the property—or upon a decree or judgment of a competent court, with continued occupation and

possession of some part of that property for five years—unless it consists of a tract divided into lots.

(2) When there has been an actual and continued occupation of land under a claim of title (exclusive of any other right), but not founded upon a written instrument, judgment or decree.

(3) When the claim of title is founded upon a written instrument or a judgment or decree—the land is deemed to have been possessed and occupied in the following cases: (a) Where it has been usually cultivated or improved; (b) Where it has been protected by a substantial enclosure (such as a fence sufficient to turn cattle, even though it had been out of repair from time to time; or a wire netting fence with posts four to five feet high, or four by fours, set five to eight feet apart, with two rails; (c) Where, although not so enclosed, it has been used for the supply of fuel or of fencing timber, for the purpose of husbandry, or for pasturage or for the ordinary use of the occupant; (d) Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been yet not clear, or not enclosed according to the usual custom and course of the adjoining country, shall have been deemed to have been occupied for the same length of time as the part improved and cultivated; (4) When the claim of title is not founded upon a written instrument, or decree, land is deemed to have been possessed and occupied in the following cases only: (a) Where it has been protected by substantial enclosure; (b) Where it has been usually cultivated or improved; provided, however, that in no case shall adverse possession be considered established unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and that the persons, or their predecessors and grantors, have paid all the taxes, which have been levied and assessed upon their land.

An action may be brought by any person against another who claims an estate in real property, adverse to him, for the purpose of determining such adverse claim, and he may also transfer it with the same effect as if in actual possession.

An action must be commenced within one year after making an entry upon real estate, and within five years from the time when the right to make it accrued. The adverse claimant need not remain upon the property every minute of the entire period, but may

take occasional trips away from it; he may also convey the title and another person take possession—as his agent.

Illustrations: One person had continuously used a roadway from 1858 to 1872, and his tenant since then to April, 1895. He was then prevented from using it further, and brought an action in 1896 to determine his right. He could use the road.

Islands: Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary. An island, or accumulation of land formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island, or accumulation, is formed; or, if not formed on one side only, then to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Land formed by accretions from an island in the center of a navigable stream toward the bank, yet which leaves a depression or slough dividing the island from the mainland, is the property of the state.

Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another. The fruit of the tree belongs to the owner of the trunk, but if he goes upon the land of his neighbor to pluck the fruit, he becomes a trespasser. The adjoining owner has the right to lop off the roots and branches of a tree which grow into or overhang his land, or to pick up the fruit which falls upon his ground. A tree whose trunk is upon the dividing line of two or more owners belongs to them in common. Neither can cut it down without the other's consent, nor in anywise mutilate even the portion on his own ground, if the tree is injured by it.

It is a misdemeanor to cut down, destroy or injure any kind of wood or timber, standing or growing upon the lands of another, or to carry this away—and the wrongdoers should pay the owner treble the value of the wood, as damages.

Consideration: (See Contracts.) In the absence of fraud, the amount of the consideration for a deed is immaterial. A valuable

consideration is such as money or the like. A good consideration is such as that of blood and natural affection.

A promise to furnish support to the grantor for life is a good consideration. This may be oral when the deed has actually been delivered and part of the services have been performed. If the grantees, after years of personal service, had refused to proceed further with the contract, the grantor could undoubtedly rescind and the court would then balance the value of the services rendered and the money paid with the value of the occupation of the land to the grantees and reach a conclusion as to the terms under which a cancellation of the deed would be just.

Description: The lands of this State were originally surveyed in one of two ways: First: When California belonged to Mexico it was the frequent custom for officials high in power in Mexico to grant parcels of land to their friends or favorites, giving them (for example) as much as they could walk around in a day, or as much as they desired in a certain vicinity. The map of lands in the southern part of California, particularly, is frequently dotted with what are called "grants," of large size and irregular shape. By reference to maps which show the contour of the country it will be found that these grants include the level and best land in these various vicinities, leaving the washes, hillsides and stony places outside of the grant. It was these grants which the Mexican officials gave away.

16 rods	×	16 rods	=	1 Acre.	100 ft. × 108 9-10 ft.	=	1/4 Acre
8 "	×	20 "	=	1 "	25 "	×	100 "
5 "	×	32 "	=	1 "	25 "	×	110 "
4 "	×	40 "	=	1 "	25 "	×	120 "
5 yards	×	908 "	=	1 "	25 "	×	125 "
10 "	×	484 yards	=	1 "	25 "	×	150 "
20 "	×	242 "	=	1 "	2178 square feet	=	.05 "
40 "	×	121 "	=	1 "	4356 "	=	.10 "
80 "	×	60 1/2 "	=	1 "	8712 "	=	.20 "
160 "	×	30 1/4 "	=	1 "	17424 "	=	.40 "
320 feet	×	156 feet	=	1 "	34848 "	=	.80 "
440 "	×	99 "	=	1 "	69696 "	=	1.60 "
110 "	×	380 "	=	1 "	139392 "	=	3.20 "
60 "	×	728 "	=	1 "	278784 "	=	6.40 "
120 "	×	363 "	=	1 "	557568 "	=	12.80 "
240 "	×	181 1/2 "	=	1 "	1115136 "	=	25.60 "
300 "	×	108 9-10 "	=	1/4 "	2230272 "	=	51.20 "
600 "	×	145 2-10 "	=	1/2 "	4460544 "	=	102.40 "

Second: By survey of the United States Government into township and ranges with their sectional subdivisions.

A township is 36 sections, each a mile square. A section is 640 acres. A quarter section, half a mile square, is 160 acres. An eighth of a section, half a mile long, north and south, and a quarter of a mile wide, is 80 acres. A sixteenth of a section, a quarter of a mile square, is 40 acres.

The sections are all numbered 1 to 36, commencing at northeast corner, thus:

nw	ne	nw	ne
nw	nw	ne	ne
sw	se	sw	se
nw	nw	ne	ne
sw	se	sw	se
sw	sw	se	se

The sections are all divided in quarters, which are named by the cardinal points, as in section 1. The quarters are divided in the same way, as shown in the smaller

6	9	4	3	2	nw ne sw se
7	8	9	10	11	12
13	17	16	15	14	13
19	20	21	22	23	24
26	25	28	27	26	25
31	32	33	34	35	36

diagram. The description of a forty-acre lot would read: The south half of the west half of the southwest quarter, or the northeast quarter of the northeast quarter, as the case might be, of section 1 in township 24 north, of range 7 west, Mount Diablo Base and Meridian. A section or quarter section will sometimes fall short and sometimes overrun the number of acres it is supposed to contain.

The land in incorporated cities and such parcels of the grants as have been subdivided is usually cut into blocks and these in turn into lots averaging fifty by one hundred and fifty feet in size—all located by means of a certified map. It frequently happens that the technical, legal or proper description is not known to the grantor, or is not easily available. In which case reference may be made in such a way as to distinguish the property from any other property in that county. The Civil Code of this State has quite elaborate rules for construing the descriptive parts of a conveyance when its meaning is doubtful.

The following have been held to be sufficient descriptions: "A lot 90x450 on the northwesterly corner of A and B streets," when it was shown that the grantor did own a lot on that corner, and that he did not own any other lot anywhere. "A house and lot of land situated on Amity Street," when shown at the trial that the seller only owned at the time one lot on that street in that city. "Forty acres of the eighty acre tract at Biggs," where it was shown that the contracting parties owned only one certain parcel of forty acres there. " $\frac{1}{2}$ of Sec. 7-23-7, and all of Sec. 18-23-7 in Syc-

more Township." "One city block between Main and Market streets produced, being the second block west of Tule Street in the City of Stockton."

Restrictions: (See Reservations.) There is a distinction between personal covenants existing solely between the seller and the buyer, and easements, which operate against the general public, either forever, or for a definite term. The following are not restrictions, but are only personal covenants:

"Subject to the following restriction; that no outbuildings or sheds shall ever be erected westerly of the main building or a greater height than those now standing on it." "Upon condition that the granted premises shall be used for no other purposes than those for which they are now used—namely, for bathing and boating upon the beach." "It is provided and covenanted as a covenant running with the land herein conveyed that certain hotel building carefully specified shall be erected upon these premises. . . . And if the hotel shall be removed by fire, the parties of the first part shall rebuild such hotel . . . and upon failure to do so, his heirs or assigns, shall reconvey the said premises to the seller." "This deed is given and accepted upon the express understanding that the party of the first part will never himself erect any structure within five feet of the land conveyed."

It has often been decided that where a tract of land is subdivided into lots, and those lots are conveyed to separate purchasers, subject to conditions which are of a nature to operate as inducements to the purchaser, and to give to each purchaser the benefit of a general plan of building or occupation, so that each shall have attached to his own lot a right in the nature of an easement in the lots of others, a right is thereby acquired by each buyer which he may enforce against any other buyer. Restrictions are valid and enforceable as long as the grantor continues to own any part of the tract.

The following is a valid restriction: "That no building whatever except a private residence, with the customary outbuildings, including a private stable, shall be erected, placed or permitted on said premises or any part thereof, and that such building shall be used as a private residence only, and shall cost, and be reasonably worth, not less than (\$....) and shall be located not less than (....) feet from the front street line of said lot . . . and it is further agreed

that no barn or shed, or other building shall be located or built closer than ninety feet from the said front line of said lot. That any breach of the foregoing conditions, occurring after the delivery of this deed, shall have the effect of forfeiting the title of the grantee and his assigns, and that thereupon his title to said real property shall revert to the grantor."

Illustration: A subsequent purchaser built a three-room shack, costing not over \$800, on the rear of a lot, and no other buildings, and lived in it. The Court decided that this was a violation of the terms of the restriction, and that the grantor had the right to a reconveyance as long as he continued to own a part of the tract for the benefit of which the restriction was exacted. But would it be a violation if the purchaser erected a stable or other outbuilding and lived in it during the time the residence was being constructed? Not decided.

Restrictive agreements of this kind will not be enforced where under all the circumstances of the case the granting of the relief sought would be inequitable.

There was a set-back clause of twenty feet, and the purchaser (buying on installments) erected a building within eight feet of the front line of the lot; but the seller had full knowledge that this building was being so built, and did not object to it; on the contrary, his agent said it "would be all right;" it was held that an injunction would not be permitted compelling the owner to set this building back.

Reservations and Exceptions: (See Restrictions) . The difference between a reservation and an exception in this: A reservation is of something taken back out of that which is granted, such as a right or privilege. It is to be interpreted in favor of the grantor. An exception is always something withheld from the estate and not granted at all, so that the title to the thing excepted remains in the grantor.

A clause retaining in the grantor the right to enter upon the land and cut and remove growing timber would be a reservation. In this case the title to the standing trees passes to the grantee. But the following clause is an exception, and title to the timber remained in the grantor: "With the exception of the timber on said land, which I reserve for my own use."

REVERSION is a clause in a grant by which the title to the

property granted will return automatically to the grantor, if certain things are done, or not done, within certain specified times. This frequently occurs in rights of way to railway corporations, by which the right fails upon abandonment of the road. The following are examples of the language necessary to constitute a reversion:

"Shall in like manner at the legal expiration of the said contract revert to the said party of the first part, his heirs or assigns, anything contained to the contrary notwithstanding." Nothing could be added to more clearly express the intent of the grantor. The duration of the estate or easement granted was definite and precise and was one limited for years and not in fee.

"All the foregoing conditions are hereby declared to be conditions upon which the title of the said party of the second part to the said strip of land so agreed to be conveyed, and dependant, and upon breach of the said conditions, or any of them, the said strip of land shall revert unto the said party of the first part, his heirs and assigns."

Title is not the property itself, but is rather the means by which it is held. It is acquired by (1) operation of law, or (2) by descent, or (3) by purchase.

Titles by operation of law are in turn acquired on one of eight ways: (1) by ACCRETION (which see); (2) by abandonment; (3) by prescription; (4) by ADVERSE POSSESSION (which see); (5) by ESCHEAT (which see); (6) by forfeiture; (7) by alienation; (8) by marriage. (Compare also Personal Property Titles.)

(2) ABANDONMENT is what the owner of real estate may acquire when some easement is given up—as a right of way for a railroad, which has ceased to be used. But the mere fact that it is no longer used will not be enough. There must be some actual act of abandonment, as (in this instance) of taking up the rails.

(6) FORFEITURE is where the grantee has agreed to perform certain things, or forfeit the land if he does not.

(7) ALIENATION may be either voluntary or involuntary. Involuntary is that acquired by the act of some one other than the former owner of the property, such as (1) by execution (which see, (2) by judicial decree and by eminent domain (which see) and (4) tax title (which see).

Title by voluntary alienation is that by devise and by grant. By

devise is that acquired at the death of the devisor. (See Succession; Deeds.)

The registration of titles has become so thoroughly imbedded in our system of dealing with lands that a title which cannot be traced and established by some form of public record is practically unmerchantable. Parties rely for the proof of their titles upon the chain of title which will be disclosed by an examination of the records.

"Satisfactory Title" means one which is acceptable to the buyer; "Valid Title," "Perfect Title," "Perfected Title," "Title which is not Defective"—all mean "a title fairly deducible of record." "Title Guaranteed" means "that the owner had a good and sufficient title free from litigation, palpable defects and grave doubts, fairly deducible of record and unincumbered."

B and C agreed in writing to exchange houses; each took possession of the other's house, and were to convey titles at a future day. Before that day arrived, C's original house burned, and the next day, the courthouse burned, destroying all the records. C was thus unable to procure a title or a guarantee in time, and was therefore compelled to take back the lot with the burned house and to restore B's original house to him. Several similar circumstances happened on account of the San Francisco fire in 1906.

INCUMBRANCE upon real estate is more popularly known under the term "A cloud upon the title," such as taxes, assessments, and all liens—as attachments, judgments, mechanics' liens, etc.; or prohibiting the use of firearms, or the sale of spirits upon the premises; building restrictions; a right of way for pipes and ditches for irrigation purposes, or a reservation permitting the construction of a railway.

When an agreement is made to convey land—without any mention as to incumbrances—there is an implied agreement that there shall be a good title conveyed; and if one incumbrance is mentioned, there is an implied agreement that there shall be no others. If the seller cannot, or will not, give the title which he agreed to, the buyer may do one of two things: (1) Insist upon that title and refuse to purchase; or, (2) Take such title as the seller does give and then demand an adjustment of the payments in such a manner as to protect as far as possible against loss from the defects in the title. If incumbrances consist of liens upon the land,

the buyer may deduct from the purchase price the amount necessary to pay the liens.

QUIET TITLE: An action may be brought by any person against another who claims an estate, or interest in real property, adverse to him—for the purpose of deciding such adverse claim. The land owner need not be in possession when beginning the action, or he may have only a leasehold interest, and may sue the person owning the fee. Although an estate for years is usually personal property and the title to personal property cannot be quieted—yet in the above instance it is real property.

If brought to quiet title to a tract of land claimed to have been procured by fraud and undue influence, it may be commenced within five years from the discovery of the fraud.

CERTIFICATE OF TITLE: Throughout this State, many title insurance and title guarantee, title abstract and trust companies have practically obtained absolute control of furnishing for the buyer what is commonly known as a certificate of title. The certificates of many of these companies contain clauses similar to the following:

“The Certificate does not include an examination of:

First: Municipal Records and Liens created by the act of any city, other than the City of —.

Second: Proceedings to construct sewers, improve and open streets and alleys, in the City of —, until said streets or alleys are established, and the amounts of the benefits or liabilities assessed are determined, and by notice of record, become a lien under the statute.

Third: Irrigation, Drainage, Reclamation, Protection, Sanitary and Levee District Records.

Fourth: Mining Locations, Existing Roads, Reservoir Sites, Easements for Water Locations and Rights reserved in U. S. Patents.”

GUARANTEE OF TITLE: Some companies issue what they call a “guarantee of title,” which is intended to be an insurance of the validity of the title—but, an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guarantee of title of real property, or by a policy of title insurance, must be commenced within two years from the time of the discovery of the loss or damage suffered by the party injured.

ABSTRACT OF TITLE: Is a condensed record of the transactions which have affected the property since the United States patent, showing all deeds, mortgages, incumbrances, actions at law and anything else which has tended to affect the title. With such an abstract in his possession, an owner may obtain the opinion of any good land lawyer as to the present condition of the title.

TORRENS TITLE LAW: In an endeavor to simplify the registration of land titles and to get away from burdensome charges, the voters of this State passed an amendment to the general laws—in 1915—known as the **TORRENS TITLE LAW**. A copy of this act would require too much space for the limits of this book, so I will only quote the explanation of its merits (as given by the President of the Torrens Land Law League) and refer my readers to the act itself for details, and to a good lawyer to carry them out.

The Torrens law is a modern system of registering titles to land. It does away with the endless fees of title companies for repeated examinations of title. The entire expense of transfer and registration of title to real estate under the Torrens law will be one dollar.

Under the system, the recorder enters the certificate in a bound volume kept in his office, which names the owner and shows all mortgages, liens, etc. A duplicate certificate given the owner constitutes, with owner's signature, absolute evidence of title.

To find the real owner or the condition of the title of any piece of property under the Torrens system, it will be necessary to examine only one document—the Torrens certificate. No encumbrance is valid against Torrens property unless noted on the certificate.

When property is sold or mortgaged, the duplicate must be produced and the signature of the owner taken and compared, making fraud almost impossible under the Torrens system.

A state title assurance fund is created, not by taxation, but from fees paid by those using the system, and the state insures the title forever. It substitutes state title insurance for private title insurance.

A transfer of title or a loan can be made in one hour's time, making an escrow in most cases unnecessary. When necessary, it can be placed with a bank or trust company and a note made on the Torrens certificate that such an escrow is being held.

A Torrens title requires a judicial decision when the property is

first placed under the act, giving the best foundation for the beginning of the system and reducing losses and fraud to a minimum. It will make "tax titles" practically unknown, because the owner will be notified when taxes or assessments are due and thus prevent the sale of the property for payment.

The present system furnishes no means by which the real owner of the property may be recognized and the buyer must simply take the risk, even though he is investing the earnings of a lifetime. Under the Torrens system there is absolute evidence of ownership.

ASSIGNMENT OF CONTRACT OF SALE: A contract for the sale of real property may be assigned in the same manner and with the same effect as any other contract. The assignment carries with it, of course, only such right, title, and interest as the assignor may have in the contract at the time of the assignment. This is popularly called his "equity," although in reality there is no recognized equity in the realty involved in a contract of sale. There may be as many assignment of the contract as there are new owners of the so-called equity; that is, every assignee may assign his interest to another person. Either seller or buyer may assign his right, but an assignment by the buyer will not release him from his obligation to pay. The assignment should be recorded in the same recorder's office where the original contract is recorded. But if the original contract is not recorded, the assignment of it cannot be. (See Recordation.)

(In an agreement to sell real property there was a clause by which the buyer was to be the "exclusive judge as to whether or not the title to said lands is free from all defects, liens, incumbrances, taxes and assessments whatsoever, and as to whether or not he is willing to accept the same." He afterwards assigned this right of purchase, and the Court ruled that he had also assigned the right of judging.)

The damages caused by a breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest on these expenses; by adding also (in case of bad faith) the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, as well as the expense properly incurred in preparing to enter upon the land.

The damages caused by a breach of an agreement to purchase an estate in real property, is deemed to be any excess of the amount which would have been due the seller, under the contract, over the value of the property to him.

Real Estate: See Real Property.

Reasonable: Throughout this entire book will be found the word

ERRATA:—On page 325 the following paragraph should be inserted in place of the paragraph now appearing after the word "Reasonable":

RESCISSION: See Contracts; Fraud.

An agreement that errors of description shall not avoid a contract, or shall be the subject of compensation (or both), does not take away the right of rescission for fraud nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

(The balance of the article on "Rescission" is on page 327.)

Please carry the line beginning "Reasonable" to and above the line beginning "Reasonable Time."

Quit Claim Deed: See Deeds; Quiet Title; Real Estate.

Receipts: See Payment; Checks; Sales.

Reasonable Time: See Negotiable Instruments, ¶3266b.

"reasonable," such as "reasonable care," "reasonable doubt," "reasonable amount," etc. This word has probably caused more suits of law than any other, because it is impossible to foresee what is "reasonable" in any case, unless that precise case, with all its peculiar circumstances is brought to the attention of a court. The general rule would be that in each case, what is or is not reasonable must be decided by taking into consideration all the circumstances of such particular case.

Receiver, Appointment of. A receiver may be appointed by the court in which an action is pending, or by the judge of it. 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds of it is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured; 2. In an action by a

mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt; 3. After judgment, to carry the judgment into effect; 4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment. 5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; 6. In an action of unlawful detainer, in those cases in which the superior court has exclusive original jurisdiction. 7. In all other cases where receivers have heretofore been appointed by the usages of courts of equity. No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver in it without the written consent of the parties, filed with the clerk. If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with two or more sureties, approved by the court or judge, execute an undertaking to the state of California, in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court in it.

Recordation: See Real Estate.

Reservation: See Real Estate.

Restraint of Trade. See Contracts; Statute of Frauds; Monopolies; Goodwill; Partnership.

Rescission: See Fraud; Contracts; Agency. A party to a contract may rescind in the following case: 1. If the consent of the party rescinding (or of any party jointly contracting with him), was given by mistake, or obtained through duress, fraud or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party; 2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in the whole or in part; 3. If such consideration becomes entirely void from any cause; 4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or 5. By consent of all the other parties.

Redemption: See Liens; Mortgage; Chattel Mortgage; Trust Deed; Contracts.

Reference in Case of Need: See Negotiable Instruments, ¶3212, 3213, 3248, 3250.

Remedy: See Actions.

Repairs: See Landlord and Tenant.

Repair Man's Lien: See Liens; Accession; Personal Property.

Replevin: See Claim and Delivery; Personal Property.

Restraint of Trade: See Monopoly.

Restrictions: See Real Estate.

Reversion: See Real Estate.

Revocation: See Real Estate Agents; Contracts; Wills.

Right of Way: See Real Estate, ¶8.

Right to Fish: See Real Property.

Riparian Rights: See Water Law; Real Estate.

Rooming House: See Hotel; Liens.

Sabotage: See Syndicalism.

Sailors: See Seamen.

Salaries: Garnishment of; Attachment of. See Actions; Liens; Wages.

Sales OF PERSONAL PROPERTY. See Warranty; Exchange; Title; Personal Property.

A sale is a contract by which, for pecuniary consideration, called a price, one transfers to another an interest in property. The subject of a sale must be property, the title to which can be immediately transferred from seller to the buyer.

Where a sale is made for cash, the delivery of the goods and pay-

ment of the purchase money take place at the same time. If the seller delivers the goods, believing that payment is to be made at once—and does not at once receive the money—he may then reclaim the property from the purchaser—provided, of course that he has not done some act as would prevent him in law from taking such right. It frequently happens that the seller will deliver the goods, even though there is a failure to fulfill this condition of payment. In such cases, the question whether delivery is to be considered a waiver of the condition that payment must be made before title passes, may depend upon the attendant circumstances—this being a question of intention. An absolute delivery of property to the buyer without demand of the purchase price to be paid then and there, is presumptive evidence of a willingness to give credit to the buyer, and that he is not expected to pay at once. But the contrary may be shown. An express declaration of the intention to insist upon the performance of the condition is not necessary, but may be inferred from the acts and attendant circumstances. If the condition of cash payment is not waived, the title does not pass until payment is made.

In installment sales the title does not pass by issuing and sending the purchaser monthly statements, which show the balance yet to be paid by him; nor if the personal property is affixed to real property, and the real property then mortgaged. (See Fixtures; Mortgage.)

An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing. An agreement for sale is either: 1. An agreement to sell; 2. An agreement to buy; or, 3. A mutual agreement to sell and buy.

An agreement to buy is a contract by which one engages to accept from another, and to pay a price for the title to a certain thing. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not. As between the parties, a sale may be made without either payment, or delivery, such as a sale of crops running through a series of years.

No sale of personal property, or agreement to buy or sell—for a price of \$200 or more, is valid unless (1) the agreement or some memorandum of it is in writing, and signed by the party to be

charged or his agent; or (2) the buyer accepts and receives some part of the thing sold—or, when it consists of a thing in action—then part of the evidence of it; or (3) the buyer pays part of the price at the time of the sale. An agreement to manufacture a thing, from material furnished by the manufacturer, or by another person, is not within these provisions.

After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it. See *Hiring*. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the chapter on liens. See *Rescission*; *Liens*. One who sells personal property, whether it was in his possession at the time of sale or not, must put into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien on it. See *Liens*.

Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced. One who sells personal property must bring it to his own door, or other convenient place, for the acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during the transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

Salvage: See *Wrecks*; *Lien of Wrecks*.

Satisfaction: See *Accord and Satisfaction*.

Seals are not necessary in this state to the validity of an instrument (as they are in many other states)—except, of course, those

issued by a court of record. See Negotiable Instruments, ¶3087; Corporations; Actions.

Seller's Lien: See Vendor's Lien (under Liens).

Separate Property: See Husband and Wife; Wills; Succession.

Shipper's Load and Count: See Bill of Lading, 2128g.

Shipper's Count: See Bill of Lading, 2130c.

Sheriff's Deed: See Deeds.

Seamen: See Liens; Wages; Shipping; Wrecks; Bottomry. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed Seamen, within the meaning of this law.

Ships: See Seamen; Bottomry; Insurance; Respondentia; Carriers; Freightage; Jettison; Wrecks; Bill of Lading; Employer; Rafts; Insurance; Transfer.

The term "ship or shipping," when used in this code, includes steam boats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. All things belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged are deemed its appurtenances. Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation when passing from place to place within the United States. A ship in a port of the state to which it belongs is called a domestic ship; in another port it is called a foreign ship. The registry, enrollment, and license of ships are regulated by acts of congress.

If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction. Part owners of a ship do not, by simply using it in a joint enterprise become partners as to the ship. If the owner of a ship commits its possession and navigation to another, that other, and not the owner, is responsible for its repairs and supplies. The mate of a ship is the officer next in rank to the master, and in case of the master's disability he must take his place. By doing so he does not lose any of his rights as mate.

The general agent for the owners, in respect to the care of the ship and freight, is called the manager. If he is a part owner, he

is also called the managing owner. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate, and crew, and supplies of provisions and stores. A managing owner is presumed to have no right to compensation for his own services.

A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire, and its liability is further regulated by acts of congress. Perils of the sea are from: 1. Storms and waves; 2. Rocks, shoals, and rapids; 3. Other obstacles, though of human origin; 4. Changes of climate; 5. The confinement necessary at sea; 6. Animals peculiar to the sea; 7. All other dangers peculiar to the sea.

The master of a ship is a general agent for its owner in all matters concerning the same. He has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner or his proper agent for such matters can be consulted without injurious delay. During a voyage, he is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but cannot sell or hypothecate the cargo, except in the cases mentioned in this article. He may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port, may enter into a charter party; and his contracts for those purposes bind the owner to the full amount of the value of the ship and freightage. He may hypothecate the ship, freightage, and cargo and sell part of the cargo, in the cases prescribed by the articles on bottomry and respondentia, and in no others; except that the master may also sell the cargo, or any part of it, short of the port of destination, if found to be in such perishable nature, or in such damaged condition that if it is left on board or reshipped it would be entirely lost, or would seriously endanger the interests of its owner. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions. He may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and

no other ship can be obtained to carry it to its destination,—and the sale is otherwise absolutely necessary. In case of its capture, he may engage to any person to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo. His power to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative to it, even when the owner is also liable. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

The owner of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is not responsible to third persons. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship.

A ship's manager has power to make contracts requisite for the performance of his duties as such, to enter into charter parties, or make contracts for carriages; and to settle for freightage and adjust averages. Without special authority a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

Every person who wilfully and maliciously cuts, breaks, injures, sinks, or sets adrift any vessel of less than ten gross tons, the property of another, is guilty of a misdemeanor. Every person who wilfully and maliciously cuts, breaks, or injures any vessel of ten gross tons and upward, the property of another, is guilty of a misdemeanor. Every person who wilfully and maliciously sinks or sets adrift any vessel of ten gross tons and upward, the property of another, is guilty of a felony.

Shipwreck: See Deposit; Wrecks; Ships; Seamen.

Signature: See Real Estate; Negotiable Instruments, ¶8082, 3095,

3098, 3099, 3100, 3101, 3102, 3103, 3112, 3136, 3145, 3240. A signature includes a mark. When the person cannot write, his name is written near the mark he makes, by some other person who writes his own name as a witness (John Smith, his x mark); in such a case, if it is desired that this mark be used in a sworn statement or as an acknowledgment—there must be two witnesses, each of whom subscribes his name to it.

Slander: See Privileged Communications.

Specific Performance: See Real Estate; Personal Property; Bill of Lading, 2129f.

Specific Enforcement: The following obligations can not be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform such an act which the party has not power lawfully to perform when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.
7. An agreement to deliver certain personal property.

Statute of Frauds: See Transfer; Personal Property; Sales; Real Estate.

In the following cases the agreement is invalid, unless the same or some note or memorandum of it is in writing, and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement, can not be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making of it.
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for.
3. An agreement made upon consideration of marriage other than a mutual promise to marry;
4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some

part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale-book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest in it; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will.

Section one does not apply to contracts, express or implied, for the rendition of services for an indefinite time, with payment to be made when the relation of employer and employee terminated. (See Limitations.)

Section 7 does not apply when a person sues to recover for services performed for the deceased during his lifetime.

Stock, Pasturing Stock: See Liens; Estrays.

Stockholder: See Corporations.

Stockholder's Liability: See Corporations; Foreign Corporations.

Storage: See Deposits; Liens; Findings; Warehouseman. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. He must use at least ordinary care for the preservation of the thing deposited. In the absence of a different agreement or usage, he is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and a half month's hire for the storage of any other property during any fraction of a half month. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon a reasonable notice. In spite of an agreement respecting the length of time which a deposit is to continue, it may be terminated by the depositor at any time when he pays all that would become due to the depositary in case of the deposit continuing for

such agreed time. A depositary for hire has a lien for storage charges.

If in any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage or luggage received by him for storage, or to collect his charges for storage due on it, he may cause such property to be sold, in open market, to satisfy his lien for storage, provided, that no property except perishable property shall be sold, under the provisions of this section, upon which storage charges shall not be due and unpaid for one year at the time of such sale.

Stoppage in Transit: See Sales; Personal Property; Title; Carriers; Bill of Lading, 2130f; Warehouse Receipts, 49.

A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may (upon the insolvency of the buyer or consignee becoming known to him after parting with the property), stop it while on its transit to the buyer or consignee, and resume possession of it. A person is insolvent, within the meaning of the last paragraph, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agents (unless such agent is employed merely to forward the property to the consignee). Stoppage in transit can be effected only by notice of the carrier or depositary of the property, or by taking actual possession of it. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller. See Liens. "The effect of stoppage in transit is simply to restore the goods to the possession of the seller, so as to enable him to exercise his rights as an unpaid seller. To enforce his right, he is entitled to retake the possession of the property, and must hold it until the expiration of the term of the credit, so as to be able to deliver it upon the payment of the price—since up to that time the buyer has the right to pay the price and take the property."

Streets: See Real Estate, ¶9; Highway Law.

Subpoena: At least a week before the time of the trial, all necessary witnesses should be subpoenaed. A subpoena is a process issued from the court, by which the attendance of a witness is required. It is a writ or order, directed to a person, requiring him to attend at a particular time and place to testify, and, perhaps also, requir-

ing him to bring with him any books, documents or other property under his control which may be material to the case. The service of a subpoena is made by any person over the age of eighteen years, by showing the original and delivering a copy of it to the party personally, and, if demanded by him at the same time, giving to him the fees to which he is entitled, namely two dollars for each day, and ten cents per mile, one way from the place of service to the place of trial. He must also be allowed a reasonable time for preparation and travel to the place of attendance. If a party disobeys the subpoena, he may be punished for contempt of court, but he cannot be compelled to come a greater distance than 50 miles from his place of residence—except in criminal cases. He may also be compelled to pay to the party whose subpoena he did not obey, the sum of one hundred dollars as penalty, and any further damages which may be sustained for his failure to attend. See Arrest. He must demand his fee when the subpoena is served upon him, otherwise he cannot compel payment. He must obey the summons, and if he is in court he can be compelled to testify, even though his fee has not been paid. If he demands his fee, and it is not paid at once, he need not obey the subpoena, and need not come to court until the fee is paid him.

Subrogation: See Negotiable Instruments, ¶3256.

Subscription: See Signature.

Succession: (See Escheat; Community Property; Wills; Husband and Wife.) Is the coming in of another to take the property of one who dies without disposing of it by will.

The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration, and in the following manner.

1. If the decedent ~~leaves a surviving husband or wife~~, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all

of his lineal descendants; and if the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father, nor mother then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the deceased is a widow, or widower, and leaves no issue, and the estate, or any portion of it, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the descendants of such children by right of representation, and if none, then one-half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation. If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife or kindred, and there are no heirs to take his estate or any portion of it, under subdivision eight of this section, the same escheats to the state for the support of the common schools.

ADVANCEMENTS: If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate,

but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

All gifts and grants are made as advancements, if expressed in the gift or grant to be so made; or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

If the value of the estate so advanced is expressed in the conveyance, or in the charge of it made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs to the advancement, in like manner as if the advancement had been made directly to them.

The provisions of the preceding sections of this article, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband. (Present Law.)

Upon the death of the wife, one-half of the community property belongs to the surviving husband, and the other half is subject to the testamentary disposition of the wife, subject, however, to the provisions under Wills; and in the absence of such testamentary disposition, the entire community property goes to the surviving husband without administration, except such portion thereof as may have been set apart to the wife by judicial decree for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition goes to her descen-

dants or heirs, exclusive of her husband, and the fact of intestacy may be determined. When the wife makes testamentary disposition of her interest in the community property, the entire community property is subject to the community debts, and the charges and expenses of administration. Before admission of any such will to probate, the husband shall continue in the management and control of the community property; after the admission of the will to probate, the court may and so far as the proper and advantageous administration of the estate will permit, must continue the management and control of the community property in the husband, who from time to time shall account to the estate for such management and control. (Amended, Stats. 1919.)

[Note—The above section was delayed from going into effect by referendum provisions of section 1, Article IV, of the state constitution, and will be voted upon by the people at the next general election in November, 1920, or at any special election which may be called by the Governor, in his discretion, prior to such regular election.]

Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community property by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration. (Present Law.)

Upon the death of the husband, one-half of the community property belongs to the surviving wife, and other half is subject to the testamentary disposition of the husband, subject, however, to the provisions under Wills; and in the absence of such testamentary disposition, it all goes to the surviving wife upon administration. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance and the charges and expenses of administration. (Amended, Stats. 1919.)

[Note—The above section was delayed from going into effect by referendum provisions of section 1, Article IV, of the state constitution, and will be voted upon by the people at the next general election in November, 1920, or at any special election which may be called by the Governor, in his discretion, prior to such regular election.]

The one-half of the community property which belongs to the surviving wife shall not be subject to inheritance tax or be reckoned as part of the estate of the deceased spouse for the purpose of fixing the compensation of executors or administrators or fixing attorneys fees. (Enacted, Stats. 1919.)

[Note—The above section was delayed from going into effect by referendum provisions of section 1, Article IV, of the state constitution, and will be voted upon by the people at the next general election in November, 1920, or at any special election which may be called by the Governor, in his discretion, prior to such regular election.]

Suit: See Actions.

Summons: See Action.

Sunday: See Hours of Labor; Negotiable Instruments, 3166, 3266c.

Supra Protest: See Negotiable Instruments, ¶3242, 3243, 3252, 3253, 3257.

Survivorship: See Deeds.

Supplementary Proceedings: See Execution.

Sureties: See Guaranty; Bond; Attachment.

Surveyors must receive a license, and each must show that he is a person of good moral character and that he is a fit and competent person to receive such license—in the opinion of three licensed surveyors, each of whom sign this certificate. He must also make oath that he will support the constitution of this state and of the United States, and faithfully discharge the duties of such office.

Survivorship Deed: See Real Estate.

Syndicalism: Approved May 5, 1919. Section 1. The term "criminal syndicalism," as used in this act is hereby defined as any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change. Sec. 2. Any person who: 1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or 2. Wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the mission or attempt to commit crime, sabotage, violence or unlawful

methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or 3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster, or written or printed matter in any other form, containing or carrying written or printed advocacy, teaching, or aid and abetment of, or advising, criminal syndicalism; or 4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism; or 5. Wilfully by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism, with intent to accomplish a change in industrial ownership or control, or effecting any political change. This statute was declared to be constitutional in the case of McDermott, decided by the entire bench of our Supreme Court on July 31, 1919.

Tax: See Impost; Toll. In the general sense of the word, includes every charge upon persons or property, imposed by or under the authority of the legislature, for public purposes.

Tax Deed: See Deeds.

Tax Title: See Real Estate; Title. Property on which the city or county taxes have not been paid are sold each year, and (if not bid in by the owner or some other party), are sold to the state. When the state holds title to such property for five years, it again advertises and sells. The person who then buys secures title directly from the state, good against all the world if there has been no error in any of the proceedings under which these tax sales were made. In order to satisfy himself, the purchaser should bring an action to quiet title, making the former owner a party to it. If the sale is found to be void for any reason, the original owner will have the property restored to him upon paying to the purchaser the full amount of the taxes, penalties and costs expended by him to secure and preserve the property up to that time. And the purchaser, in his turn, may have the amounts refunded by the county in excess of what he may have paid out for these items.

Telegraph: See Carriers. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they

are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order; 1. Messages from public agents of the United States or of this state, on public business; 2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use; 3. Messages giving information relating to the sickness or death of any person; 4. Other messages in the order in which they were received.

A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them (except messages from agents of the United States or of this state, on public business, to which he must always give priority); but he must fix upon certain times for the simultaneous transmission of messages previously received.

Every person whose message is refused or postponed, contrary to these provisions, is entitled to recover from the carrier his actual damages, and fifty dollars in addition to them.

Telephone Messages: See Telegraph.

Tender: See Costs; Action; Negotiable Instruments, §3151.

If an offer is made to extinguish an obligation, with intent to so extinguish it (and according to the following rules) the obligation is extinguished.

An obligation for the payment of money is extinguished by the offer of performance—if the amount is immediately deposited with some bank of good repute in this State, in the name of the creditor, and notice of this given to him.

This offer must be made by the debtor, or some person in his behalf, with his assent. If of partial performance, it is of no effect.

It must be made to the creditor (or to any one of two or more

joint creditors), or to a person authorized by one or more of them to receive or collect what is due under the obligation—if such creditor is present at the place where the offer is made; and, if not, wherever the creditor may be found.

At the option of the debtor, and unless there is some express agreement to the contrary, such offer may be made (1) at any place appointed by the creditor; (2) wherever the person to whom the offer ought to be made can be found; or, (3) if, with reasonable diligence, such person cannot be found within this state, and within a reasonable distance from his place of business or residence (or if he evades the debtor), then at his residence or place of business—if it can be found within this state, with reasonable diligence; or, (4) if this cannot be done, then at any place within this state.

If the obligation fixes a time in which it is to be performed—then the offer must be made at that time, and within reasonable hours—and not before, nor afterwards.

If no such time is fixed, then the offer may be made at any time before the debtor has refused to perform—upon reasonable demand.

If delay in delivery can be paid for and if time has not been expressly declared to be of the essence of the compensation (see *Installment Sales*), an offer of performance may be made at any time after it is due—but accompanied with an offer of such pay, and without prejudice to any rights acquired in the meantime by creditor or any other person.

Such offer must be made in good faith, and under such circumstances as is most likely to benefit the creditor. It must be free from any condition which the creditor is not bound to perform, on his part.

It is of no effect if the person making it is not able and willing to perform according to its terms.

Unless the offer is accepted, the thing to be delivered (if that is a portion of the offer) need not be so delivered.

When such thing is offered—by way of performance—it must not be mixed with other things from which it cannot be separated immediately and without difficulty.

When a debtor is entitled to the performance of a condition precedent to (or concurrent with) the performance on his part—he may make his offer dependent upon such performance of this condition.

If a person offers a thing other than money (by way of performance) and intends to treat it as belonging to the creditor, he must

retain it as a depository for hire until the creditor accepts it—or until he has given reasonable notice to the creditor that he will not retain it any longer, and until he has deposited it with another person, if with reasonable diligence a suitable depository can be found for it (see Deposits of Personal Property).

If anything is given to a creditor by way of performance and he refuses to accept it as such—he is not bound to return it without demand; but if he keeps it, he is a gratuitous depository of it (see Deposit of Personal Property).

Whoever pays money, or delivers an instrument or property, is entitled to a receipt for it from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt before he delivers the property or pays the money.

An offer in writing to pay a particular sum of money (or to deliver a written instrument or specific personal property) is equivalent to the actual production and tender of the money, or instrument or property—if it is not accepted.

All objections to the mode of performance, which the creditor has the opportunity to state to the debtor at the time of making the offer, and which could then be obviated by the debtor or his representative, are then waived by the creditor—unless then stated by him.

If the person to whom tender is made has any objection to the money, instrument or property, he must specify such objection at the time. If he does not do so, he is considered to have waived it. If the objection is to the amount of money, or the terms of the instrument, or the amount or kind of property, he must specify what he requires, or he is precluded from doing so afterward.

Performance, or offer of performance, in whole or in part, may be excused by the following causes, in proportion as each may affect it: (1) When such performance or offer is prevented or delayed by the creditor (or by the operation of law) even though there may be an agreement that this shall not be an excuse; (2) when prevented or delayed by an irresistible or superhuman cause, or by act of public enemies of this State or the United States, unless the parties have expressly agreed to the contrary; (3) when the debtor is induced to make it, by any act of the creditor intended to or naturally tending to have that effect—done at the time at which such performance or offer may be made, and not rescinded before that time.

If the creditor prevents performance of the obligation, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both partes.

If the performance of an obligation is prevented by any cause excusing it (except the act of the creditor), the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled under complete performance, and according to the benefit which the creditor receives from the actual performance.

If the creditor refuses to accept performance, before such performance is due, this is equivalent to an offer and refusal—unless he gives notice to the debtor of his willingness to accept it, before performance is actually made.

The title to the thing duly offered in performance of an obligation passes to the creditor—if such intention is at that time signified by the debtor. (See Tender; Interest.)

Though title to the thing offered in payment or performance does not pass to the creditor, such offer, duly made, stops all interest running on the obligation, and has the same effect as if performed.

Testify means every mode of oral statement, under oath or affirmation.

Third Party Claim: See Attachment.

Threshing Machine: See Fires; Liens.

Tide Lands: See Real Estate; Waters; Eminent Domain.

Timber: See Real Estate; Lumber; Rafts; Fire.

Time: See Holidays; Negotiable Instruments, ¶3167.

Title: See Real Estate; Negotiable Instruments, ¶3136; Bill of Lading, 2128c, d, e, f; Personal Property; Escheat; Tax Title; Transfer; Findings; Sale; Exchange; Stoppage in Transit; Warehouse Receipts; Installments.

The original and ultimate right to all property, real and personal, within the limits of this state, is in the people of the state. And all such property, which does not belong to any person, belongs to the people. Whenever any title to any property falls for want of heirs, or next of kin, it reverts to the people.

Title by Prescription: See Adverse Possession.

Toll: See Tax; Impost; is a sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature.

A Tort is a breach of duty, fixed by law, for which a suit for dam-

ages can be maintained. It is a private wrong, apart from contract. Example: Assault, breach of the peace, trespass, false arrest, false imprisonment, libel and slander, injury to feelings, caused by negligence. Persons in a state of society owe a duty to each other—to refrain breaking the laws and from injuring all other persons. While each person has a right to live and do with his property as he pleases, yet he must do it with reasonable regard for the rights of others—since they also have the same right. If there is no damage suffered, there can be no recompense.

Trade Acceptances: See Negotiable Instruments, ¶3223.

Trade Name: See Fictitious Name; Name.

Trademarks and Signs: One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use as a trademark—any form, symbol, or name which has not been so appropriated by another—to designate the origin or ownership of the thing or business; but he cannot appropriate exclusively any designation, or part of a designation which relates only to the name, quality or to the description of the name or business, or the place where the thing is produced, or the business carried on. Any person or persons, desiring to secure within this state the exclusive use of any trade-mark or name for any article of manufacture or for any business, shall, within thirty days after commencing to use such trademark or name, or at any time thereafter and before the filing of the said trade-mark or name by any other person, firm or corporation, file with the secretary of state his claim to the same, and a copy or description of such trademark or name, with his affidavit attached to it, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner, or agent of the owner, of such trademark or name. Any person may adopt a name for any farm or estate owned or leased by him, and register it in the manner provided for the registration of trademarks. Such registration shall have the same effect as the registration of a trademark. Any person selling or marketing the products grown on any particular farm or estate may use the name of such farm or estate as a trademark on such products, in the same manner as provided for other trademarks, and subject to the same rights and duties as provided in this article. Any person may record any trademark or name by filing with the secretary

of state his claim to the same, and a copy or description of such trademark or name, with his affidavit attached to it, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner, or agent of the owner of such trademark or name. Any person who has first adopted and used a trademark or name by filing it in the office of the secretary of state, whether within or beyond the limits of this state, is the original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trademarks or names in violation of these provisions.

Section 1. Any farm, ranch, or villa owner in this state, may upon the payment of one dollar to the secretary of state, have the name of his farm, ranch or villa duly registered in a register which the secretary of state shall keep for said purpose, and shall be furnished a certificate, issued under seal, and setting forth the name and location of the farm, ranch or villa, the name of the owner; provided, that when any name shall have been recorded as the name of any farm, ranch or villa, such name shall not be recorded as the name of any other farm, ranch or villa in this state, except by prefixing or adding of designating words to it. The secretary of state shall register such name only for the person entitled thereto.

Sec. 2. Any person who shall register as his own, any such name already in use in this state, knowing such name to be adopted as the name of a farm, ranch or villa in it, or shall make use of such name when regularly registered and in use by any other person entitled to it under the provisions of this act shall be guilty of a misdemeanor.

Transfer: See Title; Personal Property; Sales; Warranty; Real Estate; Warehouse Receipts; Bill of Lading, 2128c, d, e, f.

TRANSFER is an act of the parties or of the law, by which the title to property is conveyed from one living person to another. A voluntary transfer is an executed contract, subject to all the rules of law concerning contracts in general; except that a consideration is not necessary to its validity. Property of any kind may be transferred—except as noted. A possibility, not coupled with an interest, cannot be transferred, but a right of re-entry (or of repossession for breach of conditions subsequent) can be. A transfer may

be made without writing, unless a writing is specially required by law. See Statute of Frauds. The transfer of a thing vests in the transferee all the title to the thing transferred which the transferor then has, unless a different intention is expressed or is necessarily implied. It also transfers all its incidents, unless expressly excepted; but the transfer of the incident of a thing does not transfer the thing itself. That is, a transfer of land carries the easements with it, but the transfer of an easement will not also carry title to the land, unless expressly designated in the instrument. An interest in a ship, or in an existing trust, must be in writing, when transferred, or else by operation of law. See Ships.

A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons. Every transfer of property or charge made on it, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation. A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent. A creditor is one in whose favor an obligation exists, by reason of which he is (or may become), entitled to the payment of money. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who may not acquire a lien on the property affected by such contract.

Trees: See Real Estate; Fruit; Crops.

Trespass: See Trees; Fruit Trees; Animals; Real Estate; Conversion; Aviation.

TRESPASS is disturbance of possession. It is either (1) the entry on another's land, or (2) the taking of another's goods. (Compare Conversion.) It may be justified either (1) by license—or permission—of the party, or (2) a license of law, which is independent of the will of the individual. This may be (a) the entry under legal process to levy an attachment, or make an arrest, (b) to enter and save the life of man or beast in danger, and—to a limited extent—to save other property, where the loss could not be remedied (c) to go upon another's lands to get one's goods which have gotten there through no fault of his, but not if there through his own fault. See Trees. (d) License to enter an inn or public conveyance (e) the right of the landlord to enter at reasonable times to see that waste is not being committed (f) license of a tenant at will to enter within a reasonable time after his term has expired and remove his property (g) license to abate a private nuisance after notice.

Every person who wilfully commits any trespass by digging, taking or carrying away from any lot situated within the limits of any incorporated city—without the permit of the owner, or agent of his—any dirt, stone, or soil—and every person who injures any kind of timber upon the lands of another, or carries it away, or severs anything attached to the land or carries away dirt or stone, or tears down any fence, or sign, or notice, or enters any enclosure of another for the purpose of killing game, or injures standing crops, fruits or vegetables, or alters or defaces any boundary mark, or injures any dam or levee—is guilty of a misdemeanor.

Trial: See Action; Witnesses.

Trover: See Conversion.

Trunks: See Liens; Baggage; Luggage; Hotels.

Trust Deed: See Deeds; Validating Acts; Acknowledgments.

Trusts: See Monopoly; Husband and Wife; Corporation; Agency; Real Estate.

The trust is either: (1) Voluntary; or, (2) Involuntary. A voluntary trust is an obligation arising out of a personal confidence in and voluntary acceptance by) one person for the benefit of another. An involuntary trust is one which is created by operation of law.

The person whose confidence creates a trust is called the truster; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the

beneficiary. Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this article, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he acquired information which was given to such person in the like confidence, or over whose affairs by such confidence he obtained any control.

A trust may be created for any purpose for which a contract may be lawfully made, except as otherwise described by the article on uses and trusts and on transfers. See Real Estate.

Subject to the provisions of the first paragraph, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty: (1) An intention on the part of the trustor to create a trust; and, (2) The subject, purpose, and beneficiary of the trust. Subject to the same, a voluntary trust is created, as to the trustee, by any words or acts of his—indicating, with reasonable certainty: (1) His acceptance of the trust, or his acknowledgment made upon sufficient consideration of its existence; and, (2) The subject, purpose, and beneficiary of the trust.

One who wrongfully detains a thing is an involuntary trustee of it, for the benefit of the owner. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, (unless he has some other and better right to it), an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. In all matters connected with a trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage in such matters over the beneficiary by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

A trustee may not use or deal with the trust property for his own profit, ~~or for any other purpose unconnected with the trust~~, in any manner. A trustee who uses or disposes of the trust property, contrary to the foregoing, may, (at the option of the beneficiary), be required to account for all profits made, or to pay for the value of its use, and, if he has disposed of it, to replace it, with its fruits, or to account for its proceeds, with interest. If he uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, he is liable only to make good whatever is lost to the beneficiary

by his error. He is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows: 1. When the beneficiary, having capacity to contract permits him to do so (with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might effect his own decision, and without the use of any influence on the part of the trustee. 2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or 3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court grants permission for those not having capacity—in the manner just described.

A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary; nor may he, so long as he remains in the trust, undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the beneficiary. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust he must immediately inform the latter of it, and may be at once removed. Every violation of the provisions of this section is a fraud against the beneficiary. All transactions between a trustee and his beneficiary during the existence of the trust (or while the influence acquired by the trustee remains), by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application

of it and his rights can in no way be prejudiced by a misapplication of it by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them. The provisions of this article apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such. The mutual consent of the trustor and trustee creates a trust of which the beneficiary may take advantage at any time before its rescission.

When a trustee is appointed by a court or public officer, as such. such court or officers is the trustor, within the meaning of the last paragraph. The nature, extent, and object of a trust is expressed in the declaration of trust. All declarations of a trustor to his trustees, in relation to the trust, (before its acceptance by the trustees, or any of them), are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged in such writing. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time (except as modified by the consent of all parties interested), in the same manner, and to the same extent, as an employee. He must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for such money; and (whether he receives any compensation or not), must use at least ordinary care and diligence in the execution of his trust. If the trustee omits to invest the trust moneys according to this paragraph, he must pay simple interest on it (if such omission is negligent merely), and compound interest—if it is wilful.

A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging such claim. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of this trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate. A trustee is a general agent

for the trust property. His authority is such as is conferred upon him by the declaration of the trust and by this article and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal. Where there are several cotrustees, all must unite in any act to bind the trust property, unless the declaration of trust provides otherwise. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful. A trust cannot be revoked by the trustor after its acceptance (actual or presumed), by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation of the trustor, and in that case the power must be strictly pursued. The office of a trustee is vacated: 1. By his death; or, 2. By his discharge. A trustee can be discharged from his trust only as follows: 1. By the extinction of the trust; 2. By the completion of his duties under the trust; 3. By such means as may be prescribed by the declaration of trust; 4. By the consent of the beneficiary, if he have capacity to contract; 5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or, 6. By the Superior Court. On the death, renunciation, or discharge of one of several cotrustees the trust survives to the others. When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the superior court of the county where the trust property, or some portion of it, is situated, must appoint another trustee, and direct the execution of the trust. The court in its discretion, may appoint the original number, or any less number of trustees. The Superior Court must appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practical method of appointment. (In all cases of appointment of any trustee or trustees by any court, if the cestui que trust-ent, or any one of them are of the age of fourteen years, they, or the one or more of them of the age of fourteen years, may make nomination to the court, and unless such nominee or nomi-

nees are incompetent, to discharge the duties of trustee, the court must appoint such nominee, or nominees, as trustee, or trustees, as the case may be. The Superior Court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

No trust in relation to real property is valid unless created or declared: (1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized in writing; 2. By the instrument under which the trustee claims the estate affected; or, 3. By operation of law.

Tunnel Rights: See Mining Law.

Undue Influence is (a) the use of confidence or authority by one person for the purpose of obtaining an unfair advantage over another when the one has confidence reposed in him by the other, or when the one has real or apparent authority over the other (b) in taking an unfair advantage of another's weakness of mind; or (c) in taking a grossly oppressive and unfair advantage of another's necessities or distress. See Trusts.

Unfair means that the employer had refused to comply with the conditions upon which union men would consent to remain in its employ or handle material supplied by him.

Unlawful Detainer:

A tenant of real property for a term of less than life—is guilty of unlawful detainer when

(1) he continues in possession (in person or by subtenant) of the property, or any part of it, after the expiration of the term for which it is let to him, and does not have the permission of his landlord to do so. In case of a tenancy at will, however, there must be a thirty day notice to terminate the tenancy.

(2) he continues in possession (in person or by subtenant) without the permission of the landlord—after default in the payment of rent under the terms of the lease or agreement under which the property is held, and AFTER three days notice in writing has been served upon him. This notice must require the payment of the amount which is due, or possession of the property. Such notice may be served at any time within one year after the rent becomes due.

In case of tenancy on agricultural lands, the tenant shall be entitled to hold possession for one more year, provided he had held

possession for more than sixty days after the expiration of the term without any demand or notice to quit.

(3) he continues in possession (in person or by subtenant) after failure or neglect to perform conditions or covenants of the lease or agreement under which the property is held—including the covenant not to assign or sublet—except the agreement for payment of rent,—and three days after written notice shall have been served upon him, requiring the performance of such conditions or covenants, or the possession of the property. If these covenants are performed, or the rent is paid, within the three days, the lease is thus saved from being forfeited. But if these terms or covenants cannot be performed, then no notice needs to be given.

(4) Any tenant or subtenant assigning, subletting or committing waste upon the rented premises (contrary to the covenants of his lease) thus terminates the lease. The landlord is entitled to possession of the premises upon service of a three day notice to quit, upon the person in possession.

One must be careful about the service of these notices. Unless it is accurately done, it will be of no avail.

Notice must be given (1) by delivering a copy to the tenant personally, or (2) by leaving a copy with some person of suitable age and discretion, at either the place of business or residence of the tenant—if he should be absent from such place—AND by sending a copy by mail to him at his place of residence; or (3) if such place of residence or business cannot be ascertained, or a person of suitable age and discretion cannot be found there—then the notice must be affixed in a conspicuous place on the property, and a copy delivered to a person residing there (if there is such person), AND a copy sent by mail to the tenant, addressed at the place where the property is situated.

Usury Law: See Interest.

Torrens Title: See Real Estate.

Value: See Real Estate; Opinions; Warehouse Receipts.

Vein: See Mining.

Vehicles: See Highways; Auto; Motor Vehicle Law.

Vendor's Lien: See also Personal Property; Stoppage in Transit; Liens.

Wages: See Liens; Exemption; Attachment; Employer and Employee; Union Labor; Action; Attorney's Fee.

WAGES PREFERRED—In assignments, administration, etc. When any assignment, whether voluntary or involuntary, is made for the benefit of the creditors of the assignor, or results from any proceeding in insolvency commenced against him, the wages and salaries of miners, mechanics, salesmen, servants, clerks, laborers, and other persons, for services rendered for him within sixty days prior to such assignment, or to the commencement of such proceeding, and not exceeding one hundred dollars each, constitute preferred claims, and must be paid by the trustee or assignee before the claim of any creditor of the assignor or insolvent. Upon the death of any employer, the wages, not exceeding one hundred dollars in amount, of each miner, mechanic, salesman, clerk, servant, laborer, or other employee, for work done or services rendered within sixty days prior to such death, must be paid before any other claim against the estate of such employer, except his funeral expenses, and expenses of the last sickness, the allowance to the widow and infant children, and the charges and expenses of administration. Upon the levy of any attachment or execution, not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer, or other person who has performed work or rendered services for the defendant within sixty days prior to the levy, may file a verified statement of his claim therefor with the officer executing the writ, and give copies thereof to the debtor and the creditor and such claim, not exceeding one hundred dollars, unless disputed, must be paid by such officer from the proceeds of such levy remaining in his hands at the filing of such statement. If any claim is disputed, within the time, and in the manner prescribed the claimant must within ten days thereafter commence an action for the recovery of his demand, which action must be prosecuted with due diligence, or his claim to priority of payment is forever barred.

Whenever an employer discharges an employee, the wages or compensation for labor or service earned and unpaid at the time of such discharge shall become due and payable immediately. Whenever an employee not having a written contract for a definite period quits or resigns his employment, the wages or compensation shall become due and payable not later than seventy-two hours thereafter, unless such employee shall have given seventy-two hours previous notice of his intention to quit, in which latter case such

employee shall be entitled to his wages or compensation at the time of quitting.

All wages or compensation other than those mentioned in the preceding paragraph earned by any person in any employment not exempt by section eleven, shall become due and payable semi-monthly or twice during each calendar month, on days to be designated in advance by the employer as the regular days; provided, however, that services rendered between the first and fifteenth days, inclusive of any calendar month shall be paid for between the sixteenth and the twenty-sixth day of the month during which services were rendered, and for all services rendered between the sixteenth and the last day, inclusive, of any calendar month, said services shall be paid for between the first and tenth day of the following month; provided, however, that in agricultural, viticultural and horticultural pursuits, in stock or poultry raising, and in household domestic service, and when the employees in the said employments are boarded and lodged by the employer, the wages or compensation due any employee remaining in such employment shall become due and payable monthly or once in each calendar month, on a day designated in advance by the employer as the regular pay day, but no two successive such pay days to be more than thirty-one days apart, and the payment or settlement shall include all amounts due for labor or service up to the regular pay day.

Such wages or compensation shall include all amounts for labor or service performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, or other method of calculating the same, or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service; provided, that the labor or service to be paid for is performed personally by the person demanding payment. Nothing contained here shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in greater amounts, or in full when or before due.

Every employer shall post and keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their place of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, also

any changes in those regards occurring from time to time. Every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. All payments of money or compensation shall be made in the manner provided by law. In the happening of any strike, the unpaid wages or compensation earned by such striking employees shall become due and payable on the employer's next regular pay day, and the payment or settlement shall include all amounts due such striking employees without abatement or reduction, and the employer shall return to each such striking employee any deposit or money or other guaranty required by him from such employee for the faithful performance of the duties of the employment. Any violation of these provisions shall be punishable as for a misdemeanor, and any failure to post any such notice shall be deemed prima facie evidence of such violation.

In the event that an employer shall wilfully fail to pay, without abatement or reduction, any wages or compensation of any employee who is discharged or who resigns or quits, as in section one of this act provided, then as a penalty for such nonpayment the wages or compensation of such employees shall continue from the due date of it at the same rate until paid, or until an action for it shall be commenced; provided, that in no case shall such wages continue for more than thirty days; and provided, further, that no such employee who secrets or absents himself to avoid payment to him, or who refuses to receive the payment when fully tendered to him, including any such penalty then accrued, shall be entitled to any benefit under this act for such time as he so avoids payment.

Any person, firm, association, or corporation, or agent, manager, superintendent, or officer of it, who having the ability to pay, shall wilfully refuse to pay the wages due and payable when demanded, as herein provided, or falsely deny the amount or validity of them, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, or oppress, or hinder, or delay, or defraud, the person to whom such indebtedness is due, shall, in

addition to any other penalty imposed upon him by this act, be guilty of a misdemeanor.

These rules do not apply to the payment of wages or compensation of employees directly employed by any county, city and county, incorporated city or town, or other municipal corporation; nor to employees directly employed by the state, any department, bureau, office, board, commission, or institution of it.

ASSIGNMENT OF WAGES: No assignment of, or order for wages or salary shall be valid unless made in writing by the person by whom the said wages or salary are earned and no assignment of, or order for, wages or salary made by a married person shall be valid unless the written consent of the husband or wife of the person making such assignment or order is attached to such order or assignment. No assignment of, or order for, wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker of it.

Warehouseman: See Liens; Storage; Deposit; Food Warehouseman; Net Container Law; Weights and Measures; Fires; Warehouse Insurance.

A warehouseman, wharfinger, or other person doing a storage business must not issue any receipt or voucher for any merchandise, grain, or other product or thing of value, to any person purporting to be the owner of it, nor to any person as security for any indebtedness or for the performance of any obligation, unless such merchandise, grain, or other product, commodity, or thing has been, in good faith, received by such warehouseman, wharfinger, or other person, and is in his store or under his control at the time of issuing his receipt; nor must any second receipt for any such property be issued while a former receipt for any part of it is outstanding and uncanceled.

No warehouseman, wharfinger, or other person must sell or encumber, ship, transfer, or remove beyond his immediate control any property for which a receipt has been given, without the consent in writing of the person holding such receipt plainly indorsed on it in ink. Warehouse re-

ceipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer to the property represented by the receipt, and may be in blank or in order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and, in the case of grain, the kind, the number of sacks and pounds. If a receipt is not negotiable, it must have printed across its face, in red ink, in bold, distinct letters, the word "Non-negotiable." If a negotiable receipt is issued for any property, neither the person issuing it nor any other person into whose care or control the property comes must deliver any part thereof without indorsing on the back of the receipt, in ink, the amount and date of the delivery; nor can he be allowed to make an offset, claim, or demand other than is expressed on the face of the receipt, when called upon to deliver any property for which it was issued. If a non-negotiable receipt is issued for any property, neither the person issuing nor any other person in whose care or control the property comes must deliver any part of it, except upon the written order of the person to whom the receipt was issued.

No warehouseman or other person doing a general storage business is responsible for any loss or damage to the property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation (except, perhaps, where his advertisements are misleading). Every warehouseman, wharfinger, or other person who violates any of the provisions of the preceding paragraphs, is guilty of a felony.

Warehouse Receipts: See Warehouseman.

Section 1. That it shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign or transfer in this state, any receipt, certificate or other written instrument purporting to be a warehouse receipt, or in the similitude of a warehouse receipt or designed to be understood as a warehouse receipt, for goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any other state, unless such receipt, certificate or other

written instrument, shall have been issued by the warehousemen operating such warehouse.

Sec. 2. It shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign or transfer in this state, any receipt, certificate or other written instrument for goods, wares or merchandise claimed to be stored or deposited, in any warehouse, public or private, in any other state, knowing that there is no such warehouse located at the place named in such receipt, certificate or other written instrument, or if there be a warehouse at such place, knowing that there are no goods, wares or merchandise stored or deposited therein as specified in such report, certificate or other written instrument.

Sec. 3. It shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sign, sell, pledge, assign or transfer, in this state, any receipt, certificate or other written instrument evidencing, or purporting to evidence, the sale, pledge, mortgage or bailment of any goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any other state, unless such receipt, certificate or other written instrument shall plainly designate the number and location of such warehouse, and shall also set forth therein a full, true and complete copy of the receipt issued by the warehouseman operating such warehouse wherein such goods, wares or merchandise are stored or deposited, or are claimed to be stored or deposited: Provided, that the provisions of this section shall not apply to the issue, signing, sale, pledge, assignment or transfer of bona fide warehouse receipts issued by the warehouseman operating public or bonded warehouses in other states, according to the laws of the state wherein such warehouses may be located.

Sec. 4. Every corporation, firm or person, or agent, or employee, who shall knowingly violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than fifty nor more than one thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding six months.

Warehouse Receipts (Uniform).

Section 1. Warehouse receipts may be issued by any warehouseman.

Sec. 2. Warehouse receipts need not be in any particular form,

but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored, (b) The date of issue of the receipt, (c) The consecutive number of the receipt, (d) A statement whether the goods received will be delivered to the bearer, or to a specified person, or to a specified person or his order, (e) The rate of storage charges, (f) A description of the goods or of the packages containing them. (g) The signature of the warehouseman, which may be made by his authorized agent, (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose of it is sufficient.

A warehouseman shall be liable to any person injured by it for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

Sec. 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—(a) Be contrary to the provisions of this act. (b) In anywise impair his obligation to exercise that degree of care in the safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Sec. 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

Sec. 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

Sec. 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do

to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Sec. 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Sec. 8. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—(a) An offer to satisfy the warehouseman's lien, (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

Sec. 9. A warehouseman is justified in delivering the goods subject to the provisions of the three following sections, to one who is—(a) The person lawfully entitled to the possession of the goods, or his agent, (b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or (c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

Sec. 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivision he shall be so liable, if before such delivery he had either (a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or (b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Sec. 11. Except as provided in section 36, where warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Sec. 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Sec. 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was (a) Immaterial, (b) Authorized, or (c) Made without fraudulent intent. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from

any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Sec. 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liabilities to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Sec. 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

Sec. 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

Sec. 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense of an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

Sec. 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman

shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. If such adverse claimant shall not bring suit and serve summons on the warehouseman within forty-eight hours after the service of notice of his adverse claim, such failure shall act as a complete abandonment of such adverse claim.

Sec. 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Sec. 20. A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description of them in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

Sec. 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

Sec. 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Sec. 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind

and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion of them as the amount deposited by him bears to the whole.

Sec. 24. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Sec. 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Sec. 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 27 to Sec. 36: See Liens.

Sec. 37. A negotiable receipt may be negotiated by delivery—
(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or (b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

Sec. 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or

to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner.

Sec. 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

Sec. 40. A negotiable receipt may be negotiated—(a) By the owner of it, or (b) By any person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be regulated by delivery.

Sec. 41. A person to whom a negotiable receipt has been duly negotiated acquires by it—(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

Sec. 42. A person to whom a receipt has been transferred but not negotiated, acquires by it, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and by it to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Before the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

Sec. 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Sec. 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—(a) That the receipt is genuine, (b) That he has a legal right to negotiate or transfer it, (c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.

Sec. 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

Sec. 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods described in it.

Sec. 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value for it, without notice of the breach of duty, or fraud, mistake, or duress.

Sec. 48. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under any sale, or other disposition of it to any person receiving the same in

good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Sec. 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Sec. 50. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Sec. 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 52. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Sec. 53. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in com-

men with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 54. A warehouseman, or any officer, agent, or servant of a warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Sec. 56. In any case not provided for in this act, the rules of law and equity, including the law-merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Sec. 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 58. (1) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, setoff, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property in it.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To **"purchase"** includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction of it or as security for it.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done **"in good faith"** within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

Sec. 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

Sec. 61. This act may be cited as the Warehouse Receipts Act.

Warranty: See Sales; Exchange; Fraud; Title; Rescission; Personal Property; Warehouse Receipts; Money; Bill of Lading, 2129g;

A warranty is an engagement by which a seller assures to the buyer the existence of some fact affecting the transaction, whether past, present, or future. Except as prescribed by this article, a mere contract of sale, or agreement to sell, does not imply a warranty. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unencumbered title to it; and if he sells or agrees to sell goods by sample, he warrants the bulk to be equal to the sample; or if he agrees to sell merchandise not then in existence, he warrants that all shall be sound and merchantable at the place of production contemplated by parties, and at the place of delivery, or as nearly so as can be secured by reasonable care. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants the buyer that neither the seller (nor any agent employed by him in the transac-

tion), knows the existence of any fact concerning the things sold which would, to his knowledge destroy the buyer's inducement to buy.

If one sells, or agrees to sell, an article of his own manufacture, he thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture; and also that neither he nor his agent in such manufacture has knowingly used improper materials in it. If an article was manufactured under an order for a particular purpose, the manufacture in selling it, warrants that it is reasonably fit for such purpose. If one sells, or agrees to sell, merchandise inaccessible to the examination of the buyer, he thereby warrants that it is sound and merchantable. One who sells, or agrees to sell, any article to which there is affixed or attached a trade-mark, thereby warrants that mark to be genuine and lawfully used. One who sells, or agrees to sell, an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties to it (where that is material), the extinction of its obligations, or its invalidity for any cause. One who makes a business of selling provisions for domestic use, when selling them to one who buys for actual consumption, warrants that they are sound and wholesome. One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property. A general warranty does not extend to defects inconsistent with it, of which the buyer was then aware, or which were then easily discernable by him without the exercise of proper skill; but it extends to all other defects.

A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it. On an agreement for sale, with warranty, the buyer has the right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so. See Rescission. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition. The following expressions have been decided

to be warrantys— "in good order"; 1911 auto sold for 1912; the following are not: "all right"; "30 h. p. engine"; "30 h. p. simple engine traction"; "goods first class."

Warranty Deed: See Deeds.

Waste: See Artesian Wells; Landlord and Tenant; Real Estate.

Water Law: See Real Estate; Artesian Wells; Waste. This State contains so many conditions of water supply, that at first glance it would appear that there was a set of laws for each variety of these conditions, namely—appropriation, riparian, percolating, tunnels, springs, subterranean waters, water courses which sink during the dry season, underground streams, underground lakes; but upon more careful examination of the subject, it will be found that the laws divide themselves into three parts; those in relation to appropriation, to riparian rights, and to all others.

The standard miner's inch of water shall be equivalent to one and one-half cubic feet of water per minute, measured through any aperture or orifice.

Water boundaries are as follows (unless otherwise specified in the deed): (1) When bordering on tide water—then to the ordinary high tide mark. This means the limit reached by those tides which happen between the full and change of the moon twice in every 24 hours. The owner of such land has the right of access to the ocean, and could even build a wharf across the lands of the state, preventing a stranger from doing the same thing. (2) When bordering upon a navigable stream or lake, where there is no tide, then to the edge of it, at low water mark. (3) Upon any other water, then to the middle of the lake or stream. (See Riparian.)

Where two parcels of land belonging to different owners are adjacent to each other, and one is lower than the other, and the surface water from the higher tract has been accustomed by a natural flow to pass off over the lower tract—the owner of the upper tract has an easement to have the water flow over the land below—since every landowner must bear the burden of receiving on his land the surface water naturally falling upon land above it, and naturally flowing from it on to the lower land. The owner of the higher land has no right (even for his own relief) either to divert surface or storm waters from his lands on to the lands of another—over which they would not naturally have flowed; nor has he the right by accumulating the surface waters upon his own

lands (in ditches or other artificial channels) to precipitate them upon his neighbor's land in larger quantities, or in a different form from that which they would have taken in the course of nature.

APPROPRIATION: All water or the use of water within the State of California is the property of the people of the State of California, but the right to the use of running water flowing in a river or stream or down a canyon or ravine may be acquired by appropriation; provided, that no water for the generation of electricity or electrical or other power may be appropriated for a longer period than twenty-five years, except by a municipal corporation, other than an irrigation district or a lighting district, or by an irrigation district when such electricity, electrical or other power is for use and distribution only within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, or by a lighting district when such electricity, electrical or other power is for use and distribution only within its own limits. The appropriation must be for some useful or beneficial purpose and when the appropriator or his successor in interest ceases to use it for such purposes, the right ceases. The person entitled to the use may change the place of diversion if others are not injured by the change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished. As between appropriators, the one first in time is the first in right, but he may take only that quantity necessary for use on his own lands. An appropriator's right is limited to such quantity (not exceeding the capacity of the ditch), as he may put to a useful purpose upon his land within a reasonable time, by use of reasonable diligence. He cannot waste. If there is any surplus over and above the water necessary for his beneficial use, he must restore it to its accustomed flow in the stream.

APPROPRIATION BY STORAGE.

Section 1. The storing of water underground by the owner of the right to the use of it, and the damming of streams and the flowing of water on lands necessary to the accomplishment of such storage, if the water is to be later withdrawn by pumps, tunnels, or

other suitable means for irrigation, domestic or other beneficial uses within the territory served by the owners of the water right, with water for irrigation, domestic or other beneficial uses are hereby declared to be reasonable, economic, and beneficial methods of taking and applying such water, if the water so taken is from time to time being put to the beneficial uses for which it was appropriated.

Sec. 3. None of the provisions hereof shall apply to the use of artesian well water or affect riparian rights in any way.

RIPARIAN: One who owns land which borders a running stream is called a riparian owner, and his rights in the waters of the stream are said to be "riparian" rights. He is entitled to the land covered with water, in front of his bank to the center of the watercourse, and to the use of the water flowing over that land in its natural current, without diminution or obstruction. This watercourse need not flow constantly but should be expected at some season of the year; it must have a source independent of that fitful and occasional character which comes from melting snow or falling rain; it must be a stream flowing in a definite channel, with a bed and banks or sides and may be partly above the surface and partly beneath, or some times above and some times below. As long as running water continues in its natural course it cannot be made subject to private ownership.

The riparian owner does not own the water. He has the right to use the water in a reasonable quantity for domestic and irrigation purposes, and must return the surplus to the stream within the boundary of his land, that it may pass on to a lower riparian owner. He has the right to insist that this water shall not be polluted before it reaches his land, nor diminished from use by other riparian owners—so as to deprive him of his just portion. If the needs of a riparian owner do not prompt him to make use of the water, he still has the right to have them flow onto and along, and over, lands in the usual way—except as may be changed by act of God, or as the amount of it may be decreased by the reasonableness of upper riparian owners. But none of his rights to put the water to legitimate use are lost because he does not use them. These rights are attached to the soil and pass with it, and may be lost only by grant, condemnation or proscription.

Lands situated beyond the natural watershed of a stream, which are not drained by it—cannot be considered as riparian, even though they

form part of a tract owned in one body; and such owner, under his riparian claim—and to the injury of another riparian owner—cannot take the waters beyond its natural watershed, for any purpose; even for manufacturing, when it would practically return. An upper riparian owner is limited in his right to the use of water upon his land within the watershed of the stream. He may take his proportion of the water. The surplus must be returned to the channel of the river at the lower boundary of his land. After he has thus used his legitimate part of the water, he cannot object to its diversion to any beneficial use by a lower riparian owner, or their successors—even though they might take it out of the watershed.

The right to take water, as against a riparian owner, may be acquired by prescription, but lower riparian owners using their water cannot acquire title to them by prescription against upper riparian owners on the same stream who do not use the water. There can be no prescriptive right to divert the waters of a stream, as against an upper riparian owner, at a point below his land—by reason of his long acquiescence in such diversion and use. There can be no title by prescription where the acts making the adverse claim of use are not sufficient. A riparian right is not destroyed by the acquisition of an easement for a highway, canal, or road along the shore.

In all actions which may be hereafter brought when an injunction or restraining order may be applied for to prevent the diversion, diminution or increase of the flow of water in its natural channels, to the ordinary flow of which the plaintiff claims to be entitled, the court shall first require due notice of the application to be served upon the defendant, unless it shall appear from the verified complaint or affidavits upon which the application therefor is made, that, within ten days before the time of such application, the plaintiff has been in the peaceable possession of the flow of such water, and that, within such time, said plaintiff has been deprived of the flow of it by the wrongful diversion of such flow by the defendant, or that the plaintiff, at the time of such application, is, and for ten days before has been, in possession of the flow of said water, and that the defendant threatens to divert the flow of such water.

PERCOLATING WATERS: The doctrine that the owner of the soil was the absolute owner of the water percolating in it, and could extract the waters at will, regardless of its effect on other lands—is unsuited to our conditions. Outside of underground waters con-

tained in ancient canyons, or lake basins, there is no percolating waters in this State sufficient to be of much importance; riparian rights cannot attach to such a body, nor is it governed by laws pertaining to running streams. There is no distinction between a stream gathered together by means of a tunnel, and one gathered by an artesian well. When two or more persons own different tracts of land, underlaid by porous material extending to and communicating with them all—which is saturated with water moving with more or less freedom in it—each has a common and correlative right to the use of this water upon his own land, to the full extent of his needs (if the common supply is sufficient), and to the extent of a reasonable share of it, if the supply is so scant that the use by one will affect the supply of the other. Neither one may divert any of the water beyond the water shed, for commercial purposes. If this underground stream of water is supplied by the flood waters of a stream, the owner has a primary right to the full flow of such waters, in order to bring his stratum up to its water bearing capacity.

Subterranean water is presumed to be percolating and one who claims the right in it as a flowing stream—must prove that fact. The relative rights of the owner of a nonriparian land containing percolating waters which feed a surface stream, are the same as that of a riparian owner; for the principle is the same, and these percolating waters and the stream fed by them, constitute a common source of supply. When there is a well-defined subsurface flow within the bed and banks of a stream—the subterranean waters are to be regarded as but a valuable portion of the surface stream so far as riparian rights and privileges of appropriation are concerned. If there is an underground water course, well defined, within definite boundaries, the riparian rules will apply, otherwise these underground waters will usually be considered under the general definitions of percolating waters.

If the water is supplied upon land, for its benefit (as for irrigation), the right to receive and use it becomes in the nature of an appurtenance to land. If it is supplied for personal use to all persons within certain territory, or to all of a certain class within such territory (as for domestic use), the right of its use is personal to the inhabitants of that territory—or to the members of that class—as long as they remain such. In either case the right may be enforced against the person in control of the supply, and the works

by which it is distributed (regardless of the title to the water), by means of an action in mandamus to compel a continuance of the distribution, in the usual and proper manner of those entitled. A license to use a water ditch is an easement; but it is not an estate in land, if it is revocable. If the owner of a piece of land which has a water supply, sells a portion of that land to which water had been ditched, he also conveys an implied right for continuous use in the water supply. If the right of way for an irrigation ditch has been given across certain lands in a definite direction and place, it cannot be changed without consent of the owner of the land, and if it were a perpetual right, it would constitute a cloud on the title.

If crops are destroyed (as for lack of water), the measure of damages is their value in their condition at the time and place of destruction. To determine this, one may determine the probable yield and market value, and deduct the cost of producing and marketing and value of the landlord's share. The measure of damages for breach of contract to furnish water for irrigation is the market value of the crop at the selling place, less the expenses incurred in growing and marketing the crop. Measure of damages where there is a total failure to deliver water contracted for, is the difference between the rental value of the land with water, and its value without water, and deducting the lawful price of the water.

WATER CORPORATIONS: No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities of it, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city or county, or town the right to regulate the rates for water, nor must be made for a term exceeding fifty years. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants of it, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons upon proper demand for it, and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state.

Any corporation organized for or engaged in the business of sell-

ing, distributing, supplying or delivering water for irrigation purposes or for domestic use, may provide in its laws that water shall only be so used, distributed, sold, supplied or delivered to owners of its capital stock, and that such stock shall be issued appurtenant to certain lands—when the lands are described in the certificate issued for the shares of stock; and when such certificate is so issued and a copy of the bylaws recorded in the office of the county recorder of the county in which such lands are situated, these shares of stock shall only be transferred with said lands, and shall pass as an appurtenance to them. Where a water company is engaged in the distribution of water for public use, it probably cannot be permitted to discontinue, except it is not in a financial responsibility to continue.

When any corporation, organized under the laws of this state, furnishes water to irrigate lands which such corporation has sold, the right to the flow and use of said water shall remain a perpetual easement to the land so sold, at such rate and terms as may be established by such corporation in pursuance of law. And whenever any person who is cultivating land on the line and within the flow of any ditch owned by such corporation, has been furnished water by it with which to irrigate such land—such person shall be entitled to the continued use of said water, upon the same terms as those who purchased their lands of the corporation.

MUTUAL WATER COMPANY: A stockholder may enjoin an increase of stock, and an issue to new stockholders, and a proposal to supply more land with water—when the water system is already carrying all the land it can. The rights of a stockholder to have water furnished upon his land is an inseparable adjunct of his membership. In the absence of a provision to the contrary, either in the certificate of stock, or resolution, by-law—or other writing—the stockholders are to be regarded as equal in right. He may enforce his privilege, by writ of mandamus—even though he has not actual title to the land, but has crops upon it.

An agreement to “deliver an amount of water equal to irrigating each seven acres” of a twenty-acre tract, means that water may be accumulated for 30 days and used during an entire 24 hours, instead of delivery in a continuous flow during the entire 30 days. If one party to a contract breaks it (such as payment for water at times and price agreed upon) this does not permit the other party to break it also (such as a water company who re-

fused to deliver any more water because former bills had not been paid). (This probably is not the rule in some cities, where ordinance has made a different law.) If it was agreed that the consumer "might elect to cumulate the use of water (of a specified number of inches during certain months), at any one month or more"; this would entitle him to accumulate only at periods of one month or more—he could not have water twice a month. A two-thirds vote of the stockholders is necessary to divide up its water rights.

When two or more persons are associated by agreement in the use of a ditch, flume, pipe line or other conduit, for the conveyance of water, or who are using such or any part of it, for the irrigation of land, or for any other lawful purpose, to the construction of which they, or their grantors, have contributed, each is liable to the others, for the reasonable expenses of maintaining and repairing it, and of distributing such water, in proportion to the share to which he is entitled in the use of the water; and if one neglects, after demand in writing, to pay his proportion of such expense, he is liable therefore in an action for contribution, and in any judgment against him, counsel fees, as well as any interest from the time of such demand, must be included. Contracts to deliver water may be held to be liens upon the land; and may be foreclosed.

Weighmaster: See Public Weighmaster.

Weights and Measures: See Warehouseman; Net Container Law. All weights and measures used by any person in this State must be standard to those received from the United States under act of Congress June 14, 1836, and other which from time to time may be sent from the United States. Each city and county shall have a sealer of weights and measures, whose duty it is to examine all weights and measures used, made or sold by any one in the state, and to condemn or destroy those which he finds are not precise.

Wharfinger: See Warehouseman.

Wills: See Succession; Gifts, (under Personal Property); Eachest. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided under Succession, being chargeable in both cases with the payment of all the decedent's debts.

Either husband or wife may, by will, dispose of his or her half

of the community property by and with the consent of the other, which consent must be in writing upon or attached to the will; but either spouse may, without the consent of the other, make such testamentary disposition in favor of the other spouse or of the lineal descendants of the testator. (Enacted, Stats. 1919.)

[Note.—The above section was delayed from going into effect by referendum provisions of section 1, Article IV, of the state constitution, and will be voted upon by the people at the next general election in November, 1920, or at any special election which may be called by the Governor, in his discretion, prior to such regular election.]

A will, or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided.

A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or hospital purposes, cannot take under a will, unless expressly authorized by statute.

Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and nuncupative will, must be executed and attested as follows: (1) It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name to it; (2) The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator himself, or some person made by him or by his authority; (3) The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and, (4) There must be two attesting witnesses, each of whom must sign the same as a witness, at the end of the will, at the testator's request and in his presence. (See Signature.)

AN HOLOGRAPHIC WILL: An [h]olographic will is one that is entirely written, dated, and signed by the hand of the testator

himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

WITNESS:

A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness to it, are void, unless there are two other competent subscribing witnesses to the same; but a charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

REVOCATION:

Except in the cases in this chapter mentioned, no written will, nor any part of it, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,
2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses.

The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless after such destruction, cancellation, or revocation, the first will is duly republished.

If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless (1) provision has been made for such issue by some settlement, or (2) unless such issue are provided for in the will, or (3) in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless (1) provision has been made for her by marriage contract, or (2) unless she is provided for in the will, or (3) in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

If, after making a will, the testatrix marries, and the husband survives the testatrix, the will is revoked, unless provision has been made for him by marriage contract, or unless he is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

If, after making a will, the testatrix marries, and has issue of said marriage, born either in her life time or after her death, and the husband or issue survives her, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

REVOCATION OF CODICILS: The revocation of a will revokes all its codicils.

MUTUAL WILL: A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

CONDITIONAL WILL: A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

CHILDREN: A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. But such succession does not impair or affect the validity of any sale of property made by authority of such will.

When any testator omits to provide in his will (1) for any of his children, or (2) for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. But such succession does not impair or affect the validity of any sale of property made by authority of such will.

When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

FOREIGN WILL: No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter, except that a will made in a state or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of said state or country, is valid in this state so far as the same relates to personal property.

CHARITIES: ~~No estate, real or personal,~~ shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made at least thirty days prior to such death, such devise or legacy and each of them shall be valid; provided, that ~~no such devise or bequest shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary to this section shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law; and provided, further, that bequests and devises to the state, or to any state institution, or for the use or benefit of the state or any state institution, are exempted from the restrictions of this section.~~

The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

NONCUPATIVE WILL: A noncupative will is not required to be in writing, nor to be declared or attested with any formalities.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

No proof must be received of any nuncupative will, unless it is

offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

No probate ~~of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.~~

Wines: See Transfer.

Without Recourse: See Negotiable Instruments.

Workmen's Compensation Law gives to the injured working man a percentage of his salary (usually 65 per cent) with doctors and hospital services paid also, if he receives any injury during the course of his employment which causes him to be out of work for more than two weeks.

If he is not paid at once, he files a claim with the Industrial Accident Commission (provided he has notified his employer of the accident within thirty days after it happened, or provided his employer or his agent knew of the accident—in case such notice was not given).

At the hearing he may be represented by a lawyer, or not, as he prefers.

The employer has no excuse, or defense, unless the employee was grossly negligent himself—such as being drunk, or doing something or being in some place which had been forbidden him.

The employer cannot be sued in the State courts, unless he was wilfully careless, and to determine this, there is no precise rule, but each case must be decided for itself.

Wrecks: See also Ships; Liens; Carriers. The sheriff in each county must give all possible aid and assistance to vessels stranded on its coast, and to the persons on board the same, and exert himself to save and preserve such persons, vessels, and their cargoes, and all goods and merchandise which may be cast by the sea upon the land, and to this end may employ as many persons as he may think proper. All citizens must aid the sheriff when required. Wrecked property may be kept or reclaimed, at the time of the wreck, by the owner, consignee, or other person entitled to the possession; but if any person has a just claim for salvage and necessary

expenses incurred in saving it, he must be paid before the property is reclaimed. The sheriff of every county in which any wrecked property is found, when no owner or other person entitled to possession appears, must take possession of it in the name of the people, cause the value of it to be appraised by disinterested persons, and keep it in some safe place to answer the owner's claims. If it is in a perishable state, the sheriff must apply to the judge of the Superior Court, upon a verified petition, for an order authorizing him to sell it. If the judge is satisfied that a sale of the property would be beneficial to the parties interested, he must make the order applied for, and the property must then be sold at public auction, at the time, and in the manner specified in the order, and the proceeds, deducting the expenses of sale, as the same is settled and allowed by such judge, must be paid to the treasurer of the county. If, within a year after the finding, any person claims the property, or its proceeds, and establishes his claim by evidence satisfactory to the judge of the Superior Court, such judge must make an order directing the officer in whose possession the property or its proceeds may be, to deliver the same to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation. Before making the order, the judge must require from the claimant a bond to the people, with one or more sufficient sureties, to be approved by the judge and filed with the county clerk (in a penalty double the value of the property or proceeds), conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within three years after its date, by any person establishing title to the property or proceeds. If the bond becomes forfeited, the judge of the Superior Court, upon the application, supported by proof of the person entitled to the benefit of it, must make an order for its prosecution for such person's benefit, and at his risk and expense. The rejection by the judge of any claim does not preclude the claimant from maintaining action for the recovery of such property or its proceeds against the officer. If the plaintiff in any such action prevails, there must be deducted from the damages, in addition to salvage and expenses, all the defendant's costs. Every officer to whom an order for the delivery of wrecked property or the payment of its proceeds is directed, must present to the claimant exhibiting it, a written statement of the claims for salvage and expenses. If the claimant refuses to allow such amount,

it must be adjusted. If in any case, the amount of salvage and expenses are not settled by agreement, the Superior Court of the county (or the master or supercargo having charge of it at the time of the wreck, or of a claimant having an order thereof or of a person claiming salvage or expenses), must determine it in a summary way, either by itself hearing the claims and proofs of the party or by referring the questions to three disinterested freeholders of the county, who must have the same powers and must proceed in the same manner as referees in civil actions, and whose decisions as to the whole amount, and as to the sums to be paid to each person interested, must be entered as the judgment of the court. The fees and expenses of the contest must be paid by the person upon whose application it was made, and are a charge on the property saved. Each referee is entitled to such per diem and expenses as the county judge may deem just.

If within a year after saving wrecked property, no claimant of the property or its proceeds appears, or if within three months after claim, the salvage and expenses have not been paid, or a suit for recovery of the property or its proceeds has not been commenced, the officer in whose custody it may be must sell it at public auction, if not already sold, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state for the benefit of the parties interested; but in no case must any deduction of salvage and expenses be made, unless the amount has been determined by the Superior Court of the county, a copy of whose order, and of the evidence in support thereof, must be transmitted by the judge to the controller. If any money paid to a county treasurer, under these paragraphs remains in his hands more than a year after it has been paid to him, the same must be paid into the state treasury. Public notice of every sale of wrecked property under the provisions of this chapter must be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county or if none is printed in the county, then by written or printed notices in three of the most public places in such county, posted up at least fifteen days previous to such sale. Every notice must state the time and place of the sale and contain a particular description of the property to be sold. Every sheriff into whose possession any wrecked property comes must immediately thereafter publish, for at least two weeks in succession,

in one or more of the newspapers printed in this state, a notice directed to all parties interested, giving a minute description of the property, and of every bale, box, case, piece, or parcel thereof, and of the marks, brands, letters, and figures on each, and stating where the same then is, and its actual condition, and the name, if known, of the vessel from which it came, her master and supercargo, and the place where such vessel then is, and her actual condition. The expenses of publishing notices under these provisions is a charge upon the property or proceeds to which it relates.

A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

Writ or Mandate, or Mandamus, may be issued by any court (except a justices' or police court), to any inferior tribunal, corporation, board, or person—to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust or station; or, to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by some inferior tribunal, board, corporation, or person. The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested, and may be either alternative or peremptory. The alternative writ must command the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted and a return day inserted.

Writ of Mandate, or Mandamus, may be issued by any court (except a justice's or police court), when an inferior tribunal, board, or officer—exercising judicial functions—has exceeded the jurisdiction of such tribunal, board, or officer—and there is no appeal, nor (in the judgment of the court) any plain, speedy and adequate remedy. The application must be made on the verified petition of the party beneficially interested, and the court may require a notice of such appli-

cation to be given to the adverse party—or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Writing includes printing and typewriting. See Negotiable Instruments, §3082.

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